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April 9, 2003

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Boston Edison Company, D.T.E. 02-80A

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced matter is the replacement response of Boston Edison Company d/b/a NSTAR Electric to Information Request DTE-2-4. Specifically, the replacement corrects two references to the year 2001 in subsection (b), which should have been 2000. Also, I have included replacement attachments for Attachment 3 and Attachment 5, which were mistakenly incomplete in the original filing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert N. Werlin" followed by a stylized monogram or set of initials in parentheses.

Robert N. Werlin

Enclosures

cc: William Stevens, Hearing Officer
Sean Hanley, Rates and Revenue Requirements Division
Mark Barrett, Rates and Revenue Requirements Division
Claude Francisco, Rates and Revenue Requirements Division
Joseph Rogers, Assistant Attorney General
Judith Laster, Assistant Attorney General

COMMONWEALTH OF MASSACHUSETTS

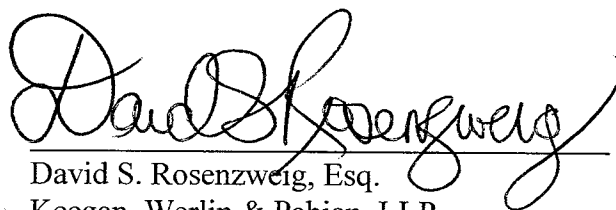
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company

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D.T.E. 02-80A

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the Department of Telecommunications and Energy, and counsel for all parties, by hand or first class mail, in accordance with the requirements of 220 C.M.R. 1.05 (the Department's rules of Practice and Procedure).



David S. Rosenzweig, Esq.
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110
(617) 951-1400

Dated: April 9, 2003

Information Request DTE-2-4

(a) Were there any instances in which certain BECo customers were placed on default service, but were later found to be eligible for standard offer service and were then transferred to standard offer service? If yes, were customers transferred from default service to standard offer service and refunded the difference between the default service price and the standard offer service price for the period of time they remained on default service? If there are settlements or judgments, please submit copies to the Department.

(b) If the answer to (a) is affirmative, please explain how the costs associated with this transfer were treated in regards to the reconciliation of standard offer and default service. What was the additional standard offer revenue as a result of these transactions? Please provide all calculations, schedules and working papers.

Replacement Response

a) Yes, certain customers placed on Default Service were later transferred to Standard Offer Service. Customers that were transferred from Default Service to Standard Offer Service were re-billed at the applicable Standard Offer Service rates, hence they received credits on their billing statements.

Attached are copies of the following settlements or judgments:

Attachment 1 Filing in Suffolk Superior Court, on January 14, 2002, including: (1) Joint Motion to Dismiss NSTAR, Inc.; (2) Amended Class Action Complaint; (3) Plaintiffs' Assented-To Motion for Preliminary Approval of Settlement Agreement; (4) Plaintiffs' Memorandum In Support of Motion for Preliminary Approval of Settlement Agreement; and (5) Stipulation and Agreement of Compromise and Settlement.

Attachment 2 Order Dismissing NSTAR, Inc., dated January 28, 2002.

Attachment 3 Order Allowing Motion for Preliminary Approval of Settlement Agreement, dated January 28, 2002.

Attachment 4 Order Certifying Class for Settlement, Granting Preliminary Approval of Settlement and Concerning Notice and Scheduling, dated January 28, 2002.

Attachment 5 Plaintiff's Motion for Final Approval of Settlement Agreement and Petition for Attorneys' Fees, dated May 20, 2002.

Attachment 6 Order Allowing Plaintiff's Motion for Final Approval of Settlement Agreement and Petition for Attorneys' Fees, dated June 3, 2002.

b) The adjustments to reflect the transfer are included in the revenue amounts shown on page 7 of the exhibits.

The revenues were adjusted through the normal billing process by adjusting individual customer bills to credit the difference between the amount that was charged under Default Service and the amount that should have been charged under Standard Offer Service. Customer credits were calculated by first canceling all affected bills that had electric usage recorded after November 30, 2000. That date was used because the prices for Standard Offer and Default Service were the same before December 1, 2000. To make the adjustment, NSTAR Electric changed the customer's supplier category from Default Service to Standard Offer Service. Then, using the customer's same account record, the accounts were rebilled applying the lower Standard Offer Service prices to the same billing electric quantities. The billing period and days involved are significant because the price for Default Service and Standard Offer Service can vary by month, as the rates changed from time to time. By keeping the same quantities and billing months, the precise bill difference could be computed. Thus, the credit was calculated as the difference between the Default Service price and the lower Standard Offer Service price, multiplied by the number of kWh over the billing period being corrected.

Credits were issued directly to each customer's account in the form of a cancelled bill transaction and a corrected re-billing transaction. Each customer was informed of the credit through a separate letter and also posted a bill message. The effect of the credits was to place revenues for Standard Offer Service and Default Service in the proper accounts, consistent with the adjusted bills of customers.

Wholesale costs associated with this transfer were treated as part of the normal month-end reconciliation and "settlement" process with ISO-NE and the wholesale supplier. Therefore, there are no specific calculations, schedules and working papers available.

ATTACHMENT 3

NOTIFY

1.17v
1-31

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf,
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

*Noted sent
2/1/02
J.L.
B.K.
B.R.
R.J.M.
B.R.
K.H.F.*

RECEIVED
JAN 14 PM 4 29
CLERK OF SUPERIOR COURT
CIVIL DIVISION

Plaintiffs' Assented To Motion For Preliminary Approval Of Settlement Agreement

The plaintiffs respectfully move this court for preliminary approval of the Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or "Settlement") filed with the Court on this date, entered into between the plaintiffs Sharon Dwyer, Julie Edwards and George Graziano and the defendants NSTAR Electric & Gas Corporation, Boston Edison Company, Commonwealth Electric Company, and Cambridge Electric Light Company (the "NSTAR Entities") in the above-captioned proceeding.

In support of their request, the plaintiffs assert that the proposed Settlement is fair and reasonable and is consistent with the provisions of Mass. R. Civ. P. 23. The NSTAR Entities assent to this motion. In further support of the motion, the plaintiffs refer the

*after hearing and in consideration of the parties' written submission
the motion is allowed.
1/28/02
Geraldine S. Jones*

ATTACHMENT 5

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

RECEIVED

MAY 20 2002

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
FOR CIVIL BUSINESS

**Plaintiffs' Motion For Final Approval Of Settlement Agreement and Petition
For Attorneys' Fees**

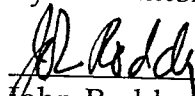
Plaintiffs respectfully move this court for final approval of the Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or "Settlement") reached with defendants NSTAR Electric & Gas Corporation, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), and Cambridge Electric Light Company ("Cambridge") (collectively the "NSTAR Entities" or "NSTAR Electric"). This Settlement was filed with the Court on January 14, 2002, and preliminarily approved on January 28, 2002. Plaintiffs also request approval of their petition for attorneys' fees and costs in this matter.

In support of their request, the plaintiffs assert that the proposed Settlement is fair and reasonable and is consistent with the provisions of Rule 23. In further support of the motion, the plaintiffs refer the court to the memoranda and exhibits filed herewith.

WHEREFORE, plaintiffs request that this Court grant this motion and enter a final order approving the Settlement. A Proposed Order is attached as Exhibit 1 for the Court's convenience.

Dated: May 20, 2002

Respectfully submitted,
Sharon Dwyer, *et al*
By their attorneys



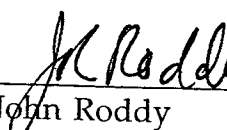
John Roddy, BBO #424240
Gary Klein, BBO #560769
Elizabeth Ryan, BBO # 549632
Grant & Roddy
44 School Street
Boston, MA 02108
(617) 248-8700 ext. 26

CERTIFICATE OF SERVICE

I, John Roddy, hereby certify that on this 20th day of May, 2002, I served the foregoing document by causing a true and correct copy to be delivered in hand to the following:

Richard J. Morrison
NSTAR Electric & Gas Corporation
800 Boylston Street
Boston, MA 02199

David S. Rosenzweig
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110



John Roddy
2

Exhibit 1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

ORDER AND FINAL JUDGMENT

Plaintiffs, on behalf of themselves and the Settlement Classes, having filed an assented to motion for an order preliminarily approving the Settlement (the "Settlement"), the Court having heard the parties on this matter and reviewed the relevant materials, and having entered its Preliminary Approval order on January 28, 2002 and having held a hearing regarding final approval of the Settlement on June 3, 2002 at 2:00 p.m., at which no objections were filed with or presented to the Court; the Court being fully advised as to the Settlement and good cause appearing therefor, the Court enters its order granting final approval of the Settlement and finds and orders as follows:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action and over all parties to this action, including all members of the Settlement Classes, as defined below pursuant to this Court's preliminary approval order entered on January 28, 2002:

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison Company ("Boston Edison") service territory and receive electric service from Boston Edison:

- a) who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and
- b) who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge Electric Light Company ("Cambridge") or Commonwealth Electric Company ("Commonwealth") service territories and receive electric service from Cambridge/Commonwealth:

- a) who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or
- b) who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

For purposes of this Settlement, the term "Settlement Classes Member" means any person who falls within the definition of either Settlement Class. For the purposes of this Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

- a) the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and
- b) the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

2. The Settlement previously filed in this action and the Settlement set forth therein, are found and determined to be fair, reasonable, and adequate, and are hereby approved and ordered performed by all parties to such Settlement. The Court determines that the notice given to the Settlement Classes constituted the best notice practicable under the circumstances and comported with the requirements of due process; and for purposes of Settlement only, that the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure are satisfied.

3. Immediately upon entry of this Order and Final Judgment, this case shall be dismissed with prejudice, which dismissal shall be without costs to any party. The Settlement approved by this Order and Final Judgment resolves all claims and disputes between the Plaintiffs, Settlement Class Members and the NSTAR Entities (i.e., NSTAR Electric & Gas Corporation, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company) in the Action, as provided in the Settlement. Further, upon entry of this Order and Final Judgment, the NSTAR Entities shall be discharged from any further liability or costs in connection with this matter.

4. This Order and Final Judgment applies to all claims or causes of action settled under the terms of the Settlement, and shall be fully binding with respect to all class members.

5. This Order and Final Judgment is a final judgment and is the Order provided for in paragraph 14 of the Settlement.

6. Without affecting the finality of this Order and Final Judgment in any way, the Court retains jurisdiction over:

- a) implementation and enforcement of the Settlement until each and every act agreed to be performed by the parties to the Settlement shall have been performed;
- b) any other action necessary to conclude the Settlement and implement the Settlement; and
- c) the enforcement, construction and interpretation of the Settlement.

7. This Order and Final Judgment does not constitute an expression by the Court of any opinion, position or determination as to the merit or lack of merit of any of the claims and or defenses of the parties. Neither this Order and Final Judgment, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by defendants or be offered or received into evidence as an admission, concession, presumption, or inference of any wrongdoing by defendants in any proceeding other than such proceedings as are necessary to consummate or enforce the Settlement.

8. No objections to the Settlement have been lodged. The Court finds no just reason to delay entry of this Settlement Order and Judgment. Accordingly, the Clerk is hereby directed forthwith to enter this Order and Final Judgment pursuant to Rule 58, Massachusetts Rules of Civil Procedure.

9. Counsel for the plaintiffs and class are awarded attorneys' fees in the amount of \$217,500, inclusive of costs, to be paid as provided in the Settlement.

10. The named plaintiffs, who were appointed and served as the Class Representatives, shall be paid \$1,000 each for duly performing such representative function, which amount shall be paid by defendants as provided in the Settlement.

_____, 2002

_____, J.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

**Plaintiffs' Memorandum In Support Of Motion For Preliminary Approval Of
Settlement Agreement**

I. Introduction

The parties have negotiated and the Court has preliminarily approved a settlement in this consumer class action under which defendants NSTAR Electric & Gas Corporation, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), and Cambridge Electric Light Company ("Cambridge") (collectively the "NSTAR Entities" or "NSTAR Electric") have agreed to provide full restitution to more than 24,500 NSTAR Electric customers who were mistakenly overbilled by being improperly placed in the wrong rate classification. The parties' agreement is contained in the Stipulation and Agreement of Compromise and Settlement (the "Settlement") attached hereto as Exhibit A. The

Settlement agreement entitles class members to receive 100% of the difference between the higher-priced "default service" rate they were charged instead of the "standard offer service" rate to which they were entitled.

In accordance with the Court's preliminary approval order, notice has been provided to approximately 91,000 NSTAR Electric customers by first class mail, via both explanatory letter and formal, court approved notice. Pursuant to the settlement agreement NSTAR Electric has provided credits to the bills of class members of approximately \$1,500,000 and has implemented modifications to those aspects of its billing systems which contributed to the billing problems rectified by the Settlement. Accordingly, the plaintiffs now move for final approval of the settlement, and contemporaneously therewith, for approval of an award of attorneys' fees and costs in the amount NSTAR Electric has stipulated to in the Settlement. NSTAR Electric assents to the motion for final approval and for the award of fees and costs.

As demonstrated below, all aspects of the settlement should be approved as fair, reasonable and adequate.

II. The Settlement Should Be Finally Approved As Fair, Reasonable And Adequate

A. Statement Of The Case

The crux of plaintiffs' case is that, since December, 2000, numerous NSTAR Electric customers have been overbilled for electric service because NSTAR Electric charged them a higher rate for that service than the law allowed. As part of the legislative effort to restructure and foster competition in the market for the generation and sale of electricity, the Legislature required the electric utilities to bill existing customers as of March 1, 1998 at the so-called "standard service transition

rate" (hereinafter "standard offer rate"), while allowing the utilities to bill other customers at the "default service rate" (hereinafter "default rate"). G.L. c. 164, §§1B(b); (d). Standard offer rate customers who move from one part of a utility's service area to another are allowed to retain their standard offer service.

Plaintiffs' investigation of NSTAR Electric's billing practices, conducted prior to and ongoing throughout this litigation, has led them to conclude that NSTAR Electric overbilled some customers because its procedures for classifying customers into appropriate billing categories contained inherent flaws which were systemically, albeit inadvertently, replicated throughout the billing system. For the most part these flaws derived from a failure to maintain procedures which consistently identified customers who retained entitlement to standard offer rates after a move from one location within an NSTAR Entity's service territory to another location within that same territory. When these standard offer customers moved, they were wrongly reassigned to the higher cost default service rate, as though they were new customers.

Perhaps the principal reason for this error is that there was an almost three year delay between the statutory creation of the two-tiered rate structure (standard offer service rate and default rate) and actual implementation of a rate differential. From March, 1998 through November, 2000 default and standard offer rates were identical. As noted above, it was only in December, 2000 that the default service rate became more expensive.

On April 23, 2001, the plaintiffs filed this class action seeking to rectify this problem. To that end plaintiffs sought a judgment declaring the NSTAR Entities' conduct unlawful and an order requiring the NSTAR Entities to reclassify incorrectly classified customers and to make full refunds of all overcharges those

customers paid. The Settlement now before the Court requires the billing reclassification and refunds sought, in addition to providing substantial other benefits to class members detailed below.

On January 28, 2002, after review of the Settlement, the parties' memoranda and additional supporting materials, and after a hearing thereon, the Court granted the Plaintiffs' Motion for Preliminary Approval of Settlement Agreement. NSTAR Electric thereafter caused notice to be provided to the plaintiff class as directed by the Court's preliminary approval Order and in accordance with the Settlement. See, Order Certifying Class For Settlement, Granting Preliminary Approval Of Settlement And Concerning Notice And Scheduling Order, attached as Exhibit B. Notice was mailed to class members on a rolling basis beginning on February 8, 2002 and concluding on April 12, 2002. Affidavit of Antonio Simas with Respect to Notice to Class Members, attached as Exhibit C.

B. The Negotiation And Terms Of The Settlement

1. The Negotiation Of The Settlement

Although this matter has been resolved by consensual agreement, it took the parties the better part of nine months of investigation, discovery and negotiation to reach an accord. In the process, Plaintiffs, by and through their counsel, have conducted an investigation of the facts, including reviews of the NSTAR Entities' billing and classification procedures, review of the circumstances of more than one hundred individual customers' classifications, and have analyzed the relevant legal and factual issues. Plaintiffs' counsel conducted interviews with defendants' counsel and others concerning the NSTAR Entities' policies and practices relating to

service classification and billing. Plaintiffs' counsel obtained substantial information about the nature and extent of the NSTAR Entities' challenged practices through this informal discovery and, have confirmed the accuracy and completeness of that information by additional formal discovery.

From that point, having had ample opportunity to review the strengths and weaknesses of their respective cases and after extensive negotiations during which numerous issues and disputes arose, it took the parties an additional four months to craft a final resolution of this lawsuit. There is a "strong initial presumption" that such an arms-length settlement arrived at by experienced and well-informed counsel is fair. Feder v. Harrington, 58 F.R.D. 171 (S.D.N.Y. 1972). Accordingly, this factor weighs in favor of final approval of the settlement in this case.

In addition, plaintiffs' counsel conditioned the Settlement upon additional discovery designed to verify the data which NSTAR Electric provided and the identification procedures employed to determine class membership. To that end, plaintiffs engaged an expert, Dr. Steven Kursh of Northeastern University, to assist them in reviewing NSTAR Electric's billing and identification procedures and in developing guidelines to ensure the accuracy and reliability of those procedures. Dr. Kursh was involved in discussions with NSTAR Electric and its counsel concerning the validity of its billing methods, suggested sampling techniques for testing the reliability of its databases with respect to the relevant issues, and greatly assisted plaintiffs' counsel in evaluating the reliability of the technical, non-legal analyses involved in assessing NSTAR Electric's compliance with the law and with the goals of the Settlement.

Plaintiffs' counsel also deposed the NSTAR Electric employees who oversaw the compilation and analysis of billing classification and rate data, which data

NSTAR Electric derived from the originally diverse billing systems employed by Boston Edison, Commonwealth Electric and Cambridge Electric. NSTAR Electric responded to plaintiffs' formal and informal discovery requests with, among other things, an electronic list of all identified class members, including the class members' names and addresses.

This documentary and testimonial information was sufficient to establish the extent of the problem and the appropriateness of the remedy contained in the Settlement. "When sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of the settlement." United States v. Cannons Engineering Corp., 720 F. Supp. 1027, 1036 (D. Mass. 1989), aff'd 899 F.2d 79 (1st Cir. 1990). The plaintiffs' discovery allowed their counsel to make an accurate assessment of each party's chances at trial, to form a reasoned conclusion that the settlement is fair and beneficial to the class and should be approved, and to ensure that the settlement data provided by NSTAR Electric is accurate and trustworthy.

The parties' negotiations have resulted in a settlement agreement which they believe is fair, reasonable, adequate and in the best interests of the class. Plaintiffs' counsel believes that the Settlement will produce substantial benefits to the class. The Settlement the parties have crafted establishes a common fund from which all class members are entitled to a recovery of 100% of the overcharges they paid as a result of being placed on default service. In addition, the vast majority of these class members automatically received their refund credits as they were identified, without having to prove their entitlement to an account credit or otherwise affirmatively demonstrating eligibility for the Settlement benefits.

2. The Terms Of The Settlement

100% Refunds Of Overcharges

The settlement agreement provides for class members to receive a credit to their NSTAR Electric accounts equal to 100% of the difference between the default service rate they improperly paid and the standard offer rate to which they were entitled. Settlement Agreement, ¶4.

The Settlement Classes

There are two settlement classes, the *Boston Edison Settlement Class*, and the *Cambridge/Commonwealth Settlement Class*. The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and

who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or

who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area

and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

As defined, the term "Settlement Class Member" means any person who falls within the definition of either Settlement Class. For the purposes of this Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and

the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

Settlement Agreement, ¶1.

Identified and Non-Identified Class Members

Each class includes a group of identified and a group of non-identified class members. The group of identified members of each class consists of those persons whose membership in the class is known to the NSTAR Entities by virtue of various searches of computerized information available to the NSTAR Entities. Settlement Agreement, ¶4. The group of non-identified members of each class consists of those persons who may be members of the class, but whose identity is not ascertainable by the means and methods of database review available. Settlement Agreement, ¶5.

NSTAR Electric has conducted a computerized review of customer billing records for all three NSTAR Entities, pursuant to agreed procedures, including social security matching, where possible, and same last name/same address matching. This review produced a list of misclassified customers who, pursuant to the Settlement, have been properly reclassified. Each such customer has received a refund credit

based on the difference between service billed at the default service rate and service billed over the same period at the standard offer rate together with an explanatory letter in a form the parties agreed to as part of the settlement negotiations. A copy of the form letter is attached as Exhibit A to the Settlement Agreement. From this computerized review, NSTAR Electric determined that a class of approximately 19,800 Boston Edison customers and 3,950 Cambridge and Commonwealth customers are entitled to automatic relief by agreement. These identified class members did not have to take any affirmative action to obtain settlement benefits – they automatically received full refunds of all amounts they paid in excess of the standard offer rate. Settlement Agreement, ¶4. These circumstances were explained in detail to the identified class members in the formal Notice each of them received in the phased mailing conducted. Affidavit of Antonio Simas, Exhibit C; Settlement Agreement, Exhibit E-1 (Identified Class Member Notice).

That identified class members received automatic entitlement to settlement benefits is unusual. “Class members are usually required to file claim forms providing details about their claims and other information ... [which may include] verification under oath ... [or other] require[d] substantiation ...” of entitlement to the settlement benefits. *Manual for Complex Litigation, Third*, §30.4 (1995). The only persons who had to provide information or take any affirmative action in order to secure settlement benefits were those class members who could not be positively identified through the computer matching process described above.

The potential class member group consists of approximately 53,100 Boston Edison default customers and approximately 15,300 Cambridge and Commonwealth default customers for whom NSTAR Electric does not have the social security numbers necessary to enable reliable data matching, but for whom there exists at

least a possibility of misclassification. Each of these customers has received a letter, in the form agreed to by the parties as part of the settlement negotiations, informing them of their possible misclassification. This letter also provides the criteria for standard offer service eligibility and encourages the customer to contact NSTAR Electric if they would like to investigate their status. A copy of this letter is attached to the Settlement as Exhibit B.

In addition, each of these customers has received a form of Notice specifically tailored for potential class members. This Notice informed these customers of a toll-free telephone number to call if they believed that they were misclassified. Settlement Agreement, Exhibit E-2. There was no evidentiary obligation placed upon unidentified class members to prove entitlement to the settlement benefits. All that was required of them was that they verbally provide relevant identity and address information to the Settlement Administrator, CCS, of Newton, Massachusetts. CCS and/or NSTAR Electric then investigated the claimant's billing and address information and informed the claimant whether he or she was a class member, and therefore entitled to receive a refund credit under the settlement. Claimants who were denied relief after contacting the available "800" number or otherwise raising a claim were provided information including the name, address, and telephone number of Class Counsel so that they could pursue a dispute of that denial if they so desired. Settlement Agreement, ¶6. Plaintiffs' counsel worked with the NSTAR Entities to resolve those eligibility questions which arose and believe that all such questions have been satisfactorily and correctly resolved. From this group of potential class members, to date 873 customers have been determined to be class members. Those persons received a full refund as described above. Settlement Agreement, ¶¶5, 6.

Notice and Administration

The NSTAR Entities have paid all costs of identifying class members, issuing class notice, and administering the Settlement, separate and apart from the common fund established to provide class refund credits. Settlement Agreement, ¶¶4.3, 17. The Settlement provided notice to the classes through mailing of the notices attached to the Stipulation as Exhibits E-1 and E-2 ("Class Notice"), and via the explanatory letters (attached to the Stipulation as Exhibits A, B and C, respectively) as well. This was a consciously redundant notice mechanism, designed to provide two separate mailings to alert both identified and non-identified class members to the Settlement, and thereby to maximize the reach of the Settlement. See, Affidavit of Antonio Simas, Exhibit C.

The language of the Class Notices and the explanatory letters were negotiated and agreed to by the parties and approved by the Court in its preliminary Order. As outlined above, to ensure that any potential class members who were not identified by the NSTAR Entities were given the opportunity to obtain the benefits of the settlement, the Notice to unidentified, potential class members was mailed to more than 68,000 NSTAR Electric customers who might have been eligible class members. As unidentified class members had to take affirmative action to be entitled to the class benefits, the first page of the notices directed to those persons contained a conspicuous, boxed, highlighted disclosure explaining the "800" number information gathering procedure applicable to those persons.

In response to the notices, NSTAR Electric received approximately 11,000 calls from class members and potential class members inquiring about the nature of the case, the Settlement, entitlement to benefits, the monetary value of benefits, eligibility and other issues related to the Settlement. Simas Affidavit, ¶5.

III. The Settlement Is Fair, Reasonable And Adequate

A class action settlement agreement requires court approval. Mass. R. Civ. P. 23. In deciding whether to approve a proposed settlement, the Court must determine whether it is fair, reasonable, and in the best interests of the class which will be affected by it. Sniffin v. Prudential Ins. Co., 395 Mass. 415, 480 NE 2d 294, 297-98 (1985), City Pshp. Co. v. Atlantic Acquisition, 100 F.3d 1041, 1043 (1st Cir. 1996). Relevant factors to this determination include: (1) the strength of the case for plaintiffs on the merits, balanced against the extent of the settlement offer; (2) the complexity, length and expense of further litigation; (3) the nature and extent of opposition to the settlement; and (4) the progress of the proceedings. Sniffin, 480 NE 2d at 298-301, citations omitted.

"There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for Court approval." 2 H. Newberg, A. Conte, Newberg on Class Actions, § 11.41 (3d ed. 1993). In determining whether class action settlements should be approved, "[c]ourts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement. [citation omitted] . . . They do not decide the merits of the case or resolve unsettled legal questions." Carson v. American Brands, Inc., 450 U.S. 79, 88 n.14 (1981).

The First Circuit Court of Appeals has recognized that there is an overriding public interest in favor of settling class actions, Lazar v. Pierce, 757 F.2d 435, 439 (1st Cir. 1985). There exists a "long-recognized policy of encouraging settlements." Durrett v. Housing Auth. of City of Providence, 896 F.2d 600, 604 (1st Cir. 1990). The opinion of plaintiffs' counsel as to the desirability of settlement is also an important

consideration: "Judges should not substitute their own judgments as to optimal settlement terms for the judgment of the litigants and their counsel." Sniffin, at 298. There is a "strong initial presumption" that an arms-length settlement arrived at by counsel experienced in the type of litigation involved on the basis of sufficient information concerning the claims at issue is fair. 2 H. Newberg, A. Conte, Newberg on Class Actions, § 11.41 (3d ed. 1993).

Such is the case here. The settlement in this matter was reached after extensive negotiations. It was negotiated at arm's length by knowledgeable class counsel. See, Affidavit of John Roddy, attached as Exhibit E. Plaintiffs' counsel have achieved a settlement which they believe will produce substantial benefits and relief for the class and that the value of these benefits is enhanced by the fact that they will be provided to the class now, without the delay, risks and burdens of further litigation.

1. Plaintiffs' Ultimate Likelihood Of Success On The Merits Was Not Assured

The most important consideration in evaluating a proposed settlement is the strength of the plaintiff's case, considering the risks of establishing liability, damages, and all other risks of litigation. Weiss v. Zayre Corp., [1989-90 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 94,883 at 94,826 (D.Mass. Aug. 16, 1989). As shown below, consideration of these factors demonstrates that the settlement is fair, reasonable and adequate and should be approved by this Court.

Though the plaintiffs believe their claims are meritorious, they recognize that ultimate success on the merits is by no means assured. The parties dispute whether NSTAR Electric would have any liability to the plaintiffs and class members for any of the charges it collected even if the facts asserted by the plaintiffs were admitted.

Notwithstanding agreement to settle this case, the NSTAR Electric denies the facts and claims alleged in plaintiffs' complaint, and denies any liability to any member of the Settlement Classes or to any third party. NSTAR Electric has also contended, and continues to contend, that it has valid and complete procedural and substantive defenses to each of the claims for relief asserted by plaintiffs in the complaint and each of the equitable or legal remedies or claims for damages sought by plaintiffs on behalf of themselves and the proposed Settlement Classes. NSTAR Electric also recognizes that the risks and possible costs of litigation puts it at considerable risk should this matter be litigated instead of settled.

2. The Settlement Requires NSTAR Electric To Make Complete Restitution

Most settlements offer only a fraction of the recovery the plaintiffs sought. In these instances, the court must balance the range of possible recovery against the risk that plaintiffs would be unable to prove their case at trial. In re "Agent Orange" Prod. Liab. Liti2., 818 F.2d 145, 170-74 (2d Cir. 1987) (discussing the weaknesses of plaintiffs' cases), cert. denied 484 U.S. 1004 (1988); Behrens v. Wometco Enters., Inc., 118 F.R.D. 534, 542 (S.D. Fla. 1988) (discussing plaintiffs risks of proceeding to trial and difficulties of proving damages in securities fraud case), aff'd, 899 F.2d 21(11th Cir. 1990).

A settlement can be adequate even if it amounts to only a small percentage of a potential recovery. Thompson v. Midwest Found. Inden. Physicians Ass'n., 124 F.R.D. 154 (S.D. Ohio 1988) (although plaintiffs won \$101 million verdict, court approved \$37 million settlement because it was neither illegal nor collusive; it was a product of arms-length negotiations and was fair in light of significant risks of continued litigation); Bennett v. Behring Corp., 737 F.2d at 987 (settlement providing for \$675,000 of maximum possible \$12 million recovery adequate);

Behrens, supra. "In fact, there is no reason ... why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." In re Domestic Air Transp. Antitrust Litig., 148 F.R.D. 297, 325 (N.D. Ga. 1993) (quoting Detroit v. Grinnell Corp., 495 F.2d 448, 455 n.2 (2d Cir. 1974)) (approving a settlement valued at approximately 12.7% to 15.3% of the minimum possible court recovery).

In Assad v. Hibbard Brown & Co., 1994 U.S. Dist. LEXIS 1688 (E.D. Pa. 1994), the court approved a settlement which provided class members with nothing more than certificates for a 5% discount on any future purchases of stock from the defendant. The court noted that although the settlement benefits were minuscule, they were nevertheless adequate given plaintiffs' doomed claims, and the court's "... function at this stage is to make sure that the interests of class members are safeguarded, and not to make business judgments for the defendants." Id., at *3.

By these standards, the Settlement obtained in this matter, which requires NSTAR Electric to reimburse class members for one hundred percent of the challenged overbillings, is clearly fair and reasonable.

3. No Class Member Has Objected To The Settlement

Of the more than 24,000 class members, not one filed an objection to the Settlement. This is not surprising since the Settlement provides full recompense to them all. When few class members object to the settlement, the court may infer that the settlement is fair. See, e.g., Marshall v. Holiday Magic, Inc., 550 F.2d 1173, 1178(9th Cir. 1977); City of Detroit v. Grinnell Corn., 495 F.2d 448, 462 (2d Cir. 1974). This inference is especially strong if a small number of objectors is dwarfed by a vast preponderance of class members supporting the settlement. In re Fleet/Norstar

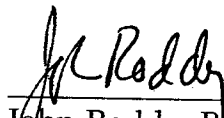
Securities Litigation, 935 F. Supp. 99, 106 (D.R.I. 1996) (10 objectors in a class of 40,000-
"Such a small number of objectors should not interfere with the approval of an
otherwise fair and reasonable settlement agreement").

IV. Conclusion

Without the class action device, this matter could not have been litigated fairly and efficiently given the tens of thousands of customer accounts involved. A class action settlement is the best method for class members to obtain a remedy for the conduct which this case challenges. For the foregoing reasons, the plaintiffs respectfully request that this Court approve the Settlement, finding it fair, reasonable and adequate.

Respectfully submitted,
Sharon Dwyer, *et al*
By their attorneys

Date: May 20, 2002



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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

**Plaintiffs' Memorandum In Support Of Assented To Motion For Approval Of
Stipulated Attorneys' Fees**

I. Introduction

This case has been resolved in a settlement which provides 100% restitution to class members and rectifies the systemic billing and classification problem which affected tens of thousands of NSTAR Electric Customers. The Settlement also provides for NSTAR Electric to pay \$217,500.00 to plaintiffs' counsel for attorneys fees, costs and expenses. Exhibit A: Settlement Agreement, ¶16. This amount is paid entirely by NSTAR Electric and not from the class recovery, and is less than fifteen percent of the total cash benefit obtained for the misclassified class members. For

these reasons, as more fully elaborated below, plaintiffs' counsel request that the Court approve the fee Stipulation.

II. The Attorneys' Fees Are Fair And Reasonable

A. *The Circumstances Under Which The Parties Negotiated The Fees Provide Substantial Evidence That The Stipulated Fees Are Reasonable*

Plaintiffs' counsel and NSTAR Electric held the negotiation of fees in abeyance until the parties had reached agreement on all material terms of the Settlement. Exhibit E: Affidavit of John Roddy. As such, fee considerations could not and did not affect the substantive elements of the Settlement Agreement. The parties' agreement on fees and costs meets the Supreme Court's directive on this issue, which sets out consensual resolution of attorneys' fees as the ideal culmination of successful litigation. In Hensley v. Eckerhart, 461 U.S. 424 (1983), the Court stated:

A request for attorney's fees should not result in a second major litigation. *Ideally, of course, litigants will settle the amount of a fee.* 461 U.S. at 437 (emphasis added). See Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 720 (5th Cir. 1974) (encouraging both sides to "understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees").

The parties were able to achieve resolution of the fee issue by agreement. The stipulation as to fees now before the Court for approval avoids the prospect of litigation over the fee award and provides for a fair and reasonable fee for the results obtained. NSTAR Electric is represented by a well-respected Boston law firm, well-informed in fee jurisprudence and skilled in legal negotiation. Were NSTAR Electric to have engaged in a contest over the appropriate amount of fees, it risked the imposition of a substantially higher award. With the substantive terms of the

Settlement agreed upon between the parties, NSTAR Electric counsel's task in these negotiations was to strike the best agreement they could, to minimize the amount of money NSTAR Electric would have to pay in legal fees.

The context of these negotiations is instructive. NSTAR Electric is obligated to pay attorneys' fees, but has an obvious economic interest in paying the smallest fee possible. The negotiations thus take on the familiar cast of the case where liability for some amount is clear – each side has an interest in ending transaction costs and achieving certainty by negotiating a sum which is more than the lowest amount the defendant could hope to achieve through litigation but less than the highest amount plaintiffs could hope would be awarded. As such, the end result of these negotiations, which reflects both sides' informed judgment of what is reasonable as a fee in these circumstances, is entitled to a great deal of weight in considering approval of the Stipulation.

The parties in this case followed the proper procedure Plaintiff's counsel and Prudential entered into fee negotiations only after the Settlement Agreement was otherwise negotiated. . . . Under these circumstances, there is no reason to believe that Prudential's counsel – having already fixed the other terms of the Settlement Agreement . . . consented to the requested fee for any reason other than their belief in its reasonableness under all the circumstances of this case.

In re Prudential Ins. Co. of America Sales Practices Litig., 962 F. Supp. 572, 577 (D.N.J. 1997).

In a class action, even where the parties have reached agreement as to the appropriate amount of the fee and it is clear that the question of fees did not affect the substantive terms of the settlement, the fee is subject to Court approval. In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig., 55 F.3d 768, 819-20 (3d Cir. 1994), cert. denied, 116 S.Ct. 88 (1995). However, a fee negotiated

under circumstances where there could be no connection between the amount of the fee and the class recovery is entitled to substantial weight.

[T]he fee was negotiated at arms' length with sophisticated defendants by the attorneys who were intimately familiar with the case, the risks, the amount and value of their time, and the nature of the result obtained for the class. . . . [T]he Court is reluctant to interpose its judgment as to the amount of attorneys' fees in the place of the amount negotiated. . . .

In re First Capital Holdings Corp. Fin. Prods. Sec. Litig., MDL No. 901, 1992 U.S. Dist. LEXIS 14337 at *13 (C.D. Cal. June 10, 1992); In re M.D.C. Holdings Sec. Litig., [1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,474 at 97,487-88 (S.D. Cal. Aug. 30, 1990) ("Because this Court believes the parties should be encouraged to settle all their disputes as part of the settlement . . ., including the amount of the fee, it believes that if the agreed-to fee falls within a range of reasonableness, it should be approved as part of the negotiated settlement between plaintiffs and defendants.").

The amount of attorneys' fees agreed upon here is comfortably within – indeed below – the range of fees awarded in similar class litigation where significantly lesser results were obtained for the class. The only party which would derive any benefit from a lower amount of fees is NSTAR Electric, and it has already stipulated to the agreed amount. The Court should therefore uphold the parties' agreement and approve the Stipulation.

B. The Common Fund Doctrine Applies To The Fee Determination

The provision of the Settlement by which NSTAR Electric has agreed to pay attorneys fees and costs is essentially an indemnity provision negotiated by plaintiffs' counsel. NSTAR Electric, as an additional benefit to the class, agreed to assume the obligation of the class to pay attorneys' fees out of the common fund. The common fund established in this case is the approximately \$1,500,000 it cost

NSTAR Electric to fund the refund credits provided to class members pursuant to the Settlement. The normal practice in class actions like this one, which establish such a monetary fund from which class members receive benefits, is to award fees from that fund, calculated as a percentage of the amounts recovered.

The common fund doctrine is one of the earliest recognized exceptions to the "American Rule" which generally requires that litigants bear their own costs and attorneys' fees. Premised on the equitable powers of the court, the common fund doctrine allows a person who maintains a suit that results in the creation, preservation or increase of a fund in which others have a common interest, to be reimbursed from that fund for the litigation expenses incurred. Central Railroad & Banking Co. v. Pettus, 113 U.S. 116 (1885). See also Sprague v. Ticonic National Bank, 307 U.S. 161 (1939). "[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980).

Here, the "common fund doctrine" applies, but the Settlement Agreement provides that it is NSTAR Electric, and not the class, which bears the obligation of paying attorneys' fees. Paragraph 16 of the Settlement Agreement states:

Class Counsel Application for Attorneys' Fees and Expenses. Plaintiffs' counsel shall apply to the Court for approval of an award of attorneys' fees, plus reimbursement of costs and expenses (including experts' fees). The NSTAR Entities will assent to this motion. *As an additional benefit to the Settlement Classes, any expenses and fees so awarded shall be paid by the NSTAR Entities (subject to the limits in the following sentence) and shall not diminish the benefits of the Settlement to the Settlement Classes.* Class Counsel shall apply for an award of fees and expenses not to exceed \$217,500, and the NSTAR Entities shall not object to Class Counsel's request for fees and expenses up to that amount and will pay such amount if awarded by the Court subject to the terms of this Stipulation. The NSTAR Entities agreed to the payment of such fees and expenses only after reaching agreement

upon all other material terms of this Settlement. Any attorneys' fees and expenses so awarded to Class Counsel shall not be payable unless and until the Final Order becomes final. Any attorneys' fees and expenses awarded to Class Counsel shall be paid as the Court may direct within ten business days after the Settlement becomes final. (emphasis added).

In this case, the efforts of plaintiffs' counsel resulted in the recovery of one hundred percent of the overcharges class members paid to NSTAR Electric as a result of the misclassified billings. The settlement also requires NSTAR Electric to pay for the cost of identifying class members, issuing notice, and administering the settlement. In short, the common fund is substantial, and the non-cash economic benefits provide a tangible, but not easily quantifiable complement to the actual cash element of the settlement.

C. The Reasonableness Of The Fees Should Be Computed As A Percentage Of The Recovery

Traditionally, fee awards in common fund cases such as this have been computed as a reasonable percentage of the fund. 1 Alba Conte, Attorney Fee Awards § 2.02 at 31 (2d. ed. 1993); Court Awarded Attorney Fees, Report of the Third Circuit Task Force, 108 F.R.D. 237 (1985) (Prof. Arthur R. Miller, Reporter); see, e.g., Camden I Condominium Ass'n, Inc. v. Dunkle, 946 F.2d 768, 771 (11th Cir. 1991). The Supreme Court has consistently held in decisions involving the computation of a common fund fee award that the fee should be determined on a percentage of the fund basis. See, e.g., Trustees v. Greenough, 105 U.S. 527, 532 (1882); Central Railroad & Banking Co. v. Pettus, 113 U.S. 116 (1885); Sprague v. Ticonic National Bank, 307 U.S. 161 (1939).

Despite the well-settled Supreme Court precedent approving the use of the percentage of recovery method for determining reasonable attorneys' fees in common fund cases, a number of years ago some courts began employing an

alternative method devised by the Third Circuit in Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161 (3d Cir. 1973) ("Lindy I"), appeal following remand, 540 F.2d 102 (3d Cir. 1976) (en banc) ("Lindy II"), known as the "lodestar" method. Under the lodestar approach, the court first multiplies the number of hours spent on the case by a reasonable hourly rate of compensation for each attorney involved. The court then adjusts that figure (usually by applying a multiplier) to reflect such factors as the contingent nature of the litigation, the quality of the attorney's work and the result achieved. Lindy I, 487 F.2d at 167-69; Lindy II, 540 F.2d at 116-18.

The lodestar fee analysis method proved to be a misguided and oft-criticized approach. See, e.g., Kirchoff v. Flynn, 786 F.2d 320, 325 (7th Cir. 1986) (lodestar method effectively turned court into "a public utilities commission regulating the fees of counsel after the services have been performed, thereby combining the difficulties of rate regulation with the inequities of retrospective rate-setting"). The Supreme Court never formally adopted or authorized the use of the Lindy lodestar approach in the common fund context. To the contrary, in Blum v. Stenson, 465 U.S. 886, 900 n. 16 (1984), the Court "clearly recognized the propriety of using the percentage of recovery method in a common fund case. Numerous courts have found this simple percentage method appropriate." Mashburn v. National Healthcare, Inc., 684 F. Supp. 679, 691 (M.D. Ala. 1988), quoting Phemister v. Harcourt Brace Jovanovich, Inc., 1984-2 Trade Cas. (CCH) ¶ 66,234 at 66,995 (N.D. Ill. 1984).

The First Circuit Court of Appeals has issued a "strong endorsement" of the percentage method of awarding attorneys' fees in a common fund case. In re Fleet/Norstar Sec. Litig., 935 F. Supp. 99, 108 (D.R.I. 1996) (so characterizing In re Thirteen Appeals Arising Out Of The San Juan DuPont Plaza Hotel Fire Litig., 56

F.3d 295, 307 (1st Cir. 1995). The district Courts within the First Circuit have repeatedly used the percentage method. See, e.g., Conley, et al v. Sears, Roebuck & Company, 1998 U.S. Dist. Lexis 7503 (D. Mass. May 1, 1998) (fee of approximately 25% of "value added" to settlement); In re Copley Pharmaceutical, Inc. Sec. Litig., C.A. No. 94-11897-WGY (D. Mass. Feb. 8, 1996) (fee equal to 33% of fund); In re Cambridge Biotech Corp. Sec. Litig., C.A. No. 93-12486-REK (D. Mass. Apr. 4, 1996) (fee of 30% of the cash and common stock in the fund); In re Fleet/Norstar Sec. Litig., 935 F. Supp. 99, 109-110 (D.R.I. 1996) (fee of 20% of common fund awarded, "at the low end" of the accepted range, because settlement produced less than optimal result).¹

In sum, there is a clear consensus, consistent with Supreme Court precedent, that the award of attorneys' fees in common fund cases should be based on a percentage of the recovery. This consensus derives from the recognition that the percentage of fund approach is the better-reasoned and more equitable method of determining attorneys' fees in such cases. Even were the lodestar approach to be used in this case, the multiplier is only based on a factor of two, well within the

¹ . "[T]he POF method in common fund cases is the prevailing praxis ..." and has "distinct advantages" in common fund cases. In re Thirteen Appeals, 56 F. 3d at 307; *accord*, Gorsey v. I.M. Simon & Co., Fed. Sec. L. Rep. (CCH) ¶ 96,236 (Zobel, J.) ("the reasonable percent of the fund approach . . . is apposite in applications for attorneys' fees from a common fund.") *See also*, In re Gillette Sec. Litig., C.A. No. 88-1858-K (D. Mass. March 30, 1994) (fee of 35% of fund); Malanka v. de Castro, [1990-1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,657 at 98,080 (D. Mass. Nov. 20, 1990) (fee of 33% of fund); Wells v. Dartmouth Bancorp. Inc., 813 F. Supp. 126, 130 (D.N.H. 1993) (fee of 33% of \$1 million common fund after deducting costs); Morton v. Kurzweil Applied Intelligence, Inc., C.A. No. 94-10829-REK (D. Mass. Apr. 26, 1995) (fee of 30% of common fund); In re Ferrofluidics Corp. Sec. Litig., C.A. No. 93-11976-PBS (D. Mass. Aug. 19, 1994) (fee of 30% of the cash and stock in the fund); In re Kendall Square Research Corp. Sec. Litig., C.A. No. 93-12352-EFH (D. Mass. July 28, 1994) (fee of 30% of cash, stock and warrants in the fund); In re Bank of Boston Corp. Sec. Litig., Master File No., 89-2269-H (D. Mass. Feb. 24, 1993) (fee of 30% of fund); Modell v. Eliot Savings Bank, C.A. No. 90-10622-H (D. Mass. Nov. 18, 1992) (fee of 30% of fund); Buonanno v. People's Savings Bank of Brockton, C.A. No. 91-11226-H (D. Mass. Nov. 18, 1992) (fee of 30% of fund); Randle v. SpecTran Corp., C.A. No. 86-2970-K (D. Mass. May 20, 1993) (fee of 30% of fund); Wells v. Monarch Capital Corp., C.A. No. 91-10575-MA (D. Mass. June 15, 1992) (fee of 28% of fund); Wechsler v. Comfed Bancorp. Inc., C.A. No. 89-2224-MLW (D. Mass. June 21, 1996) (fee of 27% of the cash in the fund); Fulco v. Continental Cablevision Inc., C.A. No. 89-1342-WGY (D. Mass. Mar. 30, 1994) (fee of 27% of the cash and stock comprising the fund); Pavlidis v. New England Patriots Football Club, 675 F. Supp. 707, 709 (D. Mass. 1987) (fee of 26% of fund).

range of reasonableness for the results obtained. See Affidavit of John Roddy, ¶ 22, Summary of Time and Expenses.

D. Percentage Fee Awards Typically Range Between Twenty And Thirty Percent Of The Fund

The normal percentage awarded by the courts is 20-30% of the value of the settlement, with 25% being a "benchmark." The cases cited in the preceding section show that, in the jurisdiction of the First Circuit, percentage fee awards range from 20% to 35% of the fund. This approach mirrors that taken by courts in other jurisdictions. For example, in Paul, Johnson, Alston & Hunt v. Gaulty, 886 F.2d at 272, the court stated that "[o]rdinarily . . . fee awards range from 20 percent to 30 percent of the fund created." In Bebchick v. Washington Metropolitan Area Transit Comm'n, 805 F.2d 396, 407 (D.C. Cir. 1986), the court found that 25% of the recovery "is a reasonable percentage [fee] for otherwise uncompensated attorneys." In Camden I Condominium Ass'n, 946 F.2d at 774-775, the court stated that "The majority of common fund fee awards fall between 20% to 30% of the fund" and that "district courts are beginning to view the median of this 20% to 30% range, i.e. 25%, as a 'bench mark'." See also Mashburn v. National Healthcare, Inc., 684 F. Supp. 679, 692 (M.D. Ala. 1988) ("The majority of common fund fee awards fall between 20% to 30% of the fund").

E. The Percentage Awarded Should Be Commensurate With The Results Obtained

The percentage of the fund awarded as an attorney's fee usually reflects the degree of success class counsel have achieved. The ratio of relief obtained to the maximum damages alleged is a measure used to differentiate those settlements in which class counsel has settled for a modest recovery from those in which they have achieved a substantial victory. For example, in Fleet/Norstar Sec. Litig., counsel

requested a 30% fee award but the court considered an award of just 20% appropriate. In setting this figure, the court wrote:

In common-fund cases, the majority of attorney fee awards fall between 20% and 30% of the fund. See Camden I, 946 F.2d at 774; Awarding Attorney Fees at 68. Some courts have declared certain percentages to be "benchmark" figures, or starting points from which departure may be made only where "special circumstances" warrant it. See Torrisi v. Tucson Electric Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993) ("in common fund cases such as this, we have established 25% of the common fund as the 'benchmark' award for attorney fees"). . . . The Court of Appeals for the First Circuit has not set forth any benchmark percentage figure, nor has it provided a definitive list of factors for the fee determination. Rather, it has remarked that, "in respect to fee awards, the trial court's latitude is 'extremely broad'." In re Thirteen Appeals Arising Out of San Juan, 56 F.3d at 309, quoting Lipsett v. Blanco, 975 F.2d 934, 937 (1st Cir. 1992). . . .

A figure of 20% is adequate and fair given the circumstances [of this case]. Hence, the appropriate fee is \$1,175,000. Twenty percent is within the range for common-fund cases of this genre, *albeit at the low end*.

935 F. Supp. at 108-110 (emphasis added).

The corollary is that a recovery which bears a closer relation to the actual losses the class suffered warrants a fee at the high end of the range. "In the typical [common fund] case, the Court should apportion the fund between the class and its counsel in a manner that rewards counsel for success and penalizes it for failure. This method resembles a contingency fee in that it awards counsel a variable percentage of the amount recovered for the class." In re Prudential Ins. Co. of America Sales Practices Litig., 962 F. Supp. at 579. (citations omitted)..

Here, the results are excellent, and therefore warrant a percentage award which is commensurate with the benefits obtained for the class. "[T]he POF [percentage of fund] technique is result-oriented rather than process-oriented...". In re Thirteen Appeals, 56 F. 3d at 307. The method by which private attorneys are encouraged to risk engaging large corporations like NSTAR Electric in class litigation is to make

the economic reward contingent on their success in achieving a recovery for the class they undertake to represent. The parallels between individual contingent fee cases and class actions are economically identical and invoke the same public policy considerations. As Judge Posner has explained:

The object in awarding a reasonable attorney's fee . . . is to simulate the market. . . . The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client.

In re Continental Ill. Sec. Litig., 962 F.2d 566, 572 (7th Cir. 1992).

The requested fees in this case, of less than fifteen percent of the fund created, and paid entirely by NSTAR Electric and not the class, are modest in light of the benefits established for the class. Cf. Gorsey v. I.M. Simon & Co., Fed. Sec. L. Rep. (CCH) ¶ 96,236 (in which Judge Zobel described the settlement as "secur[ing] only a partial victory with a recovery far less than the potential damages in the case". Despite this partial victory, Judge Zobel awarded plaintiffs' counsel a fee of 25% of the gross settlement, as well as expenses incurred.)

The percentage award sought here of less than 15% is quite conservative in light of the typical 25% "benchmark". By any measure, the fee which plaintiffs' counsel requests in this case is reasonable.

III. Conclusion

For the reasons stated above, plaintiffs' counsel respectfully request that the Court approve their fee petition and order that NSTAR Electric pay, pursuant to paragraph 16 of the Settlement Agreement, \$217,500.00 in attorneys' fees and costs.

Respectfully submitted,
Sharon Dwyer, *et al*
By their attorneys

A handwritten signature in dark ink, appearing to read "J. Roddy", is written over a horizontal line.

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Elizabeth Ryan, BBO # 549632

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Date: May 20, 2002

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

Exhibit List

- Exhibit A: Stipulation of Settlement, with accompanying exhibits –
A, B, C: Form letters to identified class members and to
unidentified, potential class members
D: Form of Proposed Preliminary Approval Order
E-1: Form of Notice to identified class members
E-1: Form of Notice to unidentified, potential class members
F: Form of Proposed Order and Final Judgment
- Exhibit B: Order Certifying Class For Settlement, Granting Preliminary
Approval Of Settlement And Concerning Notice And Scheduling Order
- Exhibit C: Affidavit of Antonio Simas with Respect to Notice to Class
Members
- Exhibit D: Order and Final Judgment (Proposed)
- Exhibit E: Affidavit of John Roddy

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
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SHARON DWYER,
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Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

Stipulation and Agreement of Compromise and Settlement

This Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or "Settlement") is entered into between the plaintiffs Sharon Dwyer, Julie Edwards and George Graziano (the "Plaintiffs") and the defendants in the above-captioned proceeding, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), Cambridge Electric Light Company ("Cambridge") and NSTAR Electric & Gas Corporation ("NSTAR Electric"), an affiliate that provides common administrative and professional services including, but not limited to, billing services to its affiliates. Collectively, the four defendants are referred to herein as the "NSTAR Entities" or the "Defendants". The parties have agreed to this

Settlement, and to the dismissal of claims against NSTAR, Inc.¹ (including NSTAR, a Massachusetts business trust and the parent company of the NSTAR Entities), subject to this Court's approval, as provided below.

WHEREAS:

A. This action was commenced in this Court by the filing of a complaint on April 23, 2001 (the "Action"). The Action was brought on behalf of a class of electric utility customers claiming to be entitled to "standard offer service" and the lower rates currently obtained thereby. Plaintiffs alleged that the NSTAR Entities had misclassified them and other similarly situated customers by placing them on "default service", which presently carries higher rates.

B. On November 25, 1997, legislation was enacted to introduce competition to the electric generation market. Chapter 164 of the Acts of 1997. The legislation provides, *inter alia*, that consumers will receive either the "standard service transition rate" ("standard offer rate"), the "default service rate" ("default rate") or elect to be served through the competitive market. G.L. c. 164, §§1B(b); (d). The legislation requires that each electric distribution company provide the standard offer rate to customers within each electric distribution company's service area as of March 1, 1998 who do not choose a competitive supplier. G.L. c. 164, §1B(b). The legislation provides that customers entitled to the standard offer rate will receive that rate from March 1, 1998 until February 28, 2005. *Id.* At all relevant times, Boston Edison, Commonwealth and Cambridge were subject to tariffs governing the provision of electric service within their respective service areas (the "tariffs").

¹ There is no actual corporation with that name in the Commonwealth.

C. The NSTAR Entities are subject to and must abide by the tariffs. The tariffs govern electric generation service provided by the NSTAR Entities to customers within the NSTAR Entities' respective service areas. The tariffs provide, in relevant part, as follows:

Standard Offer Service shall be available to each Customer who was a Customer of Record as of the Retail Access Date and who has not received Generation Service from a Competitive Supplier since the Retail Access Date.

A Customer receiving Standard Offer Service shall be allowed to retain such service upon moving within the service territory of the Distribution Company.

Plaintiffs alleged that, between March 1, 1998 and January 1, 2001, the NSTAR Entities failed to maintain procedures sufficient to ensure that customers who moved within their respective service areas would retain standard offer service.

D. Plaintiffs alleged that they and the class members had been damaged by the NSTAR Entities' conduct in that they were misclassified and thereby charged the higher default service rate for their electric service during the period they were placed upon default service. Plaintiffs sought, among other things, a judgment declaring the NSTAR Entities' conduct unlawful, ordering the NSTAR Entities to reclassify incorrectly classified customers, and requiring refund of overcharges paid.

E. Plaintiffs, by and through their counsel, have conducted an investigation of the facts, including reviews of the NSTAR Entities' billing and classification procedures, review of the circumstances of more than one hundred (100) individual customers' classifications, and have analyzed the relevant legal and factual issues. Plaintiffs' counsel have conducted interviews with Defendants' counsel and others concerning the NSTAR Entities' policies and practices relating to service classification and billing. Plaintiffs' counsel obtained substantial information about the nature and extent of the NSTAR Entities' challenged practices through this

informal discovery and, if this settlement is preliminarily approved, will confirm that information by additional formal discovery as set forth below.

F. Notwithstanding agreement to settle this case, the NSTAR Entities deny the facts or claims alleged in Plaintiffs' complaint and in this Action, and deny any liability to any member of the Settlement Classes or to any third party. The NSTAR Entities also have contended, and continue to contend, that they have valid and complete procedural and substantive defenses to each of the claims for relief asserted by Plaintiffs in the complaint and each of the equitable or legal remedies or claims for damages sought by Plaintiffs on behalf of themselves and the proposed Settlement Classes in the Action. The NSTAR Entities have also weighed the risks and possible costs of litigation of the Action against the benefits of the proposed Settlement, and consider it desirable that the claims be settled on a global basis to avoid the time, risk, and expense of defending protracted litigation and in order to achieve a final resolution of the claims being settled.

G. After extensive negotiations and the provision of information relevant to the claims and their resolution, the parties negotiated the settlement contained in this Stipulation. Based on their review and analysis of the relevant facts and legal principles, Plaintiffs and their counsel believe that, in consideration of all the circumstances and after prolonged and serious arms' length settlement negotiations with the NSTAR Entities' counsel, the terms and conditions embodied in this Stipulation are fair, reasonable, and adequate, and beneficial to and in the best interests of the Plaintiffs and the proposed Settlement Classes (as defined below). Plaintiffs' counsel have determined to execute this Stipulation and urge its approval by the Court after consideration of the following substantial benefits that the Settlement bestows upon the Settlement Classes:

(a) The members of the Settlement Classes, as defined in Section 1 below, will receive a refund, in the form of a credit to their NSTAR Entities' electric bill, of 100% of the difference between the default service rate they improperly paid and the standard offer rate to which they are entitled;

(b) The members of the Settlement Classes, as defined in Section 1 below, will be reclassified as standard offer service customers and will thereby receive standard offer service and be charged such standard offer rates for as long as they continue to be eligible for such rates;

(c) The Settlement provides for members of the Settlement Classes to receive reclassification and refund credit in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims asserted to be litigated through trial and potential appeal, even if such claims were to be found to be meritorious in all respects—in fact, more than 23,000 class members have already been provided their credits;

(d) The Settlement provides for significant monetary and other benefits to the members of the Settlement Classes beyond reclassification and refund credit, including:

(i) the Settlement obliges the NSTAR Entities, at their sole expense, to identify members of the Settlement Classes who were misclassified based on NSTAR Entities' records, to the maximum extent practicable, and to provide the benefits of the Settlement to such persons without their having to take any affirmative steps;

(ii) the settlement obliges the NSTAR Entities to provide notice to potential class members who could not be identified from the NSTAR Entities' records and to provide reclassification and refund credit to those who respond and who are then determined to be misclassified;

(iii) that the NSTAR Entities, in settling these claims, will not assert claimed defenses available to them, whether procedural or substantive; and

(iv) attorneys fees payable to class counsel will be paid by the NSTAR Entities rather than from any funds that would otherwise be available to the class.

H. The parties intend that the proposed Settlement embodied in this Stipulation resolves all claims and disputes between the Plaintiffs, Settlement Class Members and the NSTAR Entities in the Action.

In light of the foregoing, the parties propose to settle this case in accordance with the terms, provisions and conditions of this Stipulation as set forth below.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, subject to approval by the Court as provided herein below pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure by and between the NSTAR Entities and the Plaintiffs for themselves and for the Settlement Classes, by and through their respective counsel and representatives, that all claims, rights and causes of action, in law or in equity, including but not limited to claims arising under the G.L. c. 164, § 1B, G.L. c. 164, § 94, G.L. c. 164, § 93 and G.L. c.93A, or any other state law or regulation governing the provision of electric generation service by an electric utility, or otherwise, and including damages, losses and demands of any nature whatsoever (including, but not limited to, claims for compensatory damages, interest, consequential damages, restitution, punitive damages, contempt, sanctions, penalties, injunctive relief, declaratory relief, or otherwise), whether known or unknown claims, that are, could have been or might in the future be asserted by the Plaintiffs or any member of the Settlement Classes, whether directly, representatively or in any other capacity, against the NSTAR Entities or any of their present or former officers, directors, shareholders, employees, accountants, representatives, attorneys, parent companies (other than NSTAR), subsidiaries, affiliated companies, divisions, and all successors, predecessors-in-interest, heirs, agents and assigns in connection with or that arise out of the NSTAR Entities' charging of default electric service rates when standard offer service should have been provided to a member of the Settlement Classes, or any acts, facts, transactions or occurrences, alleged or otherwise asserted or that could have been asserted in this Action from the beginning of time through the date the Settlement Agreement becomes final (collectively, the "Released Claims"), shall be compromised, settled, released and discharged with prejudice (the

foregoing shall herein respectively be referred to as the "Release"), upon and subject to the following terms and conditions:

1. Settlement Classes. This Action shall proceed on behalf of two classes for the purposes of settlement, the "Boston Edison Settlement Class", and the "Cambridge/Commonwealth Settlement Class."

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

- a) who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and
- b) who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

- a) who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or
- b) who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

For purposes of this Settlement, the term "Settlement Classes Member" means any person who falls within the definition of either Settlement Class.

For the purposes of this Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

- (a) the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and

(b) the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

Each class includes a group of identified and a group of non-identified class members.

The group of identified members of each class consists of those persons whose membership in the class is known to the NSTAR Entities by virtue of various searches of computerized information available to the NSTAR Entities by the methods described below. The group of non-identified members of each class consists of those persons who may be members of the class, but whose identity is not ascertainable by the means and methods of data review described below.

2. Class Representatives. For purposes of this Settlement only, Plaintiffs Sharon Dwyer, Julie Edwards and George Graziano shall be designated as Class Representatives. It is hereby agreed, for purposes of this Settlement only, that Plaintiffs' claims are typical of the claims of the Settlement Classes and that Plaintiffs are adequate representatives of the Settlement Classes.

3. Class Counsel. For purposes of this Settlement only, the firm of Grant & Roddy shall be designated as Class Counsel.

4. Identified Members of the Settlement Classes. The NSTAR Entities have completed a review of customer billing records, pursuant to agreed procedures, including identification of multiple accounts containing identical social security number fields, and identification of multiple accounts containing identical last name and address fields. When an existing default service account was matched with a prior standard offer service account by these methods, additional review was conducted to determine if the default service account was that of a "continuous customer" of the entity that provides their electric service as defined in paragraph 1 above.

This review produced a list of misclassified customers who either have been or will soon be reclassified. Each such customer will be or has been reclassified and will receive or has received a refund credit based on the difference between service billed at the default service rate and service billed over the same period at the standard offer rate together with an explanatory letter in the form attached hereto as Exhibit A. As of the date of this Settlement Agreement, from this computerized review, the NSTAR Entities have identified approximately 19,800 Boston Edison customers and 3,900 Cambridge and Commonwealth customers who are entitled to relief as Identified Class Members.

4.1 In the class member identification process, the NSTAR Entities have acted diligently and have used reasonable efforts to identify members of the Settlement Classes who were misclassified. The processes and procedures utilized by the NSTAR Entities have been explained to Class Counsel, and by and through Class Counsel, to an expert in statistical methods. In addition, upon preliminary approval of this Settlement, the substance of those processes and procedures will be subject to confirmatory discovery as set forth in paragraph 20 below.

4.2. The NSTAR Entities will provide Class Counsel with a report setting forth the names and last known addresses of each Settlement Class Member so identified. Plaintiffs' counsel shall use this information only for purposes of administering the Settlement and subject to the terms of the Confidentiality Stipulation dated November 30, 2001.

4.3. The identification process has been and shall continue to be conducted by the NSTAR Entities at their sole expense.

4.4 As of the date of this Stipulation, the total amount of credits to identified class members anticipated to be paid is approximately \$1,450,000, representing an average credit of more than \$61 per identified class member.

5. Non-Identified Class Members.

5.1. *Boston Edison.* There is a group of approximately 53,100 Boston Edison default service customers for whom the NSTAR Entities do not have social security numbers for the purposes of matching, but for whom the parties agree there is a reasonable possibility of misclassification. A letter and formal notice (in the forms attached hereto as Exhibits B and E2 respectively), will be sent to these customers explaining the grounds on which they may be misclassified and asking them to contact NSTAR Electric if they believe that they have been misclassified. The letter as well as the notice will include an "800" number for customers who believe that they have been misclassified to request reclassification to standard offer service.

5.2. *Cambridge and Commonwealth.* There is a group of approximately 15,300 Cambridge and Commonwealth default customers for whom the NSTAR Entities do not have social security numbers for the purposes of matching, but for whom the parties agree there is a reasonable possibility of misclassification. A letter and formal notice will also be sent to these customers explaining the grounds on which they may be misclassified and including an "800" number for customers who believe that they may be misclassified. Copies of the Cambridge/Commonwealth letter and notice are attached hereto as Exhibits C and E2 respectively.

5.3 Settlement Claims Administrator. The NSTAR Entities will use CCS, of Newton, Massachusetts, as a claims administrator to obtain relevant information from non-identified claimants and assist the NSTAR Entities in processing and resolving such claims for settlement

benefits. Class Counsel will work cooperatively with the NSTAR Entities to review disputed claims and to seek informal resolutions of disputes. The claims process will request that customers contact the claims administrator by telephone or in writing within 75 days.

5.4 As of the date of this Stipulation, the total number of non-identified class members and the total amount of any credit payable to them is unknown.

6. Review of Claims to Identify Additional Class Members. Non-identified members of the Settlement Classes, who claim eligibility for such membership by contacting the available "800" number or in writing, will be reviewed for eligibility as class members by the NSTAR Entities and/or the claims administrator. Class Counsel may also submit to the NSTAR Entities additional names and addresses of customers who are or do become known to the firm through independent investigation. The NSTAR Entities will investigate each claim submitted by telephone or in writing. The NSTAR Entities will reclassify claimants and provide a refund credit calculated in the same manner provided in paragraph 4 if circumstances warrant. If any claimant is denied relief after contacting the available "800" number or otherwise raising a claim, such person will be provided information including the name, address, and phone number of Class Counsel so that they may choose to pursue a dispute of that denial. The NSTAR Entities agree to work with Class Counsel to expeditiously review and resolve any disputes raised hereunder.

7. Timing of Refund Credit. For Class Members to whom a refund credit is due, if such credit has not already been made, it shall be made no later than sixty (60) days after the Settlement is final, or thirty (30) days after the status of any non-identified class member who is determined to be entitled to a credit is resolved, whichever is later. For any members of the

Settlement Classes whose status is disputed, any refund credit shall be made as soon as practicable after the claim is resolved and the Settlement is final.

7.1 In addition to the settlement payments determined in accordance with paragraphs 4, 5 and 6, the NSTAR Entities shall pay each of the three named plaintiffs \$1,000 for serving in the capacity of Class Representatives, subject to approval of the Court.

8. Treatment of Customers Who Cannot be Located. Individuals who are no longer customers of the NSTAR Entities will not receive a refund. The parties agree that the time, effort, and expense involved in locating such individuals is unwarranted in light of the potential benefit to those individuals.

9. Full Settlement and Release. The obligations of the NSTAR Entities under this Stipulation shall be in full settlement, compromise, release and discharge of the Released Claims and each of them. In accordance with the provisions of the Final Order, at the time the Settlement becomes final: (i) for good and sufficient consideration, the receipt of which is hereby acknowledged, Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Final Order shall have fully, finally, and forever released, relinquished and discharged all Released Claims against the NSTAR Entities; and (ii) the NSTAR Entities shall have no other or further liability or obligation to any Settlement Class Member in any court or forum (state or federal) with respect to the Released Claims, except as expressly provided herein.

10. Certification of Settlement Classes. For settlement purposes only, the parties hereto agree that, as part of the Settlement Notice and Order (as defined below), the Court may make preliminary findings and enter an order granting provisional certification of the Settlement Classes subject to final findings and ratification in the Final Order (defined below), and appointing both Plaintiffs and Class Counsel as representatives of the Settlement Classes.

11. Dismissal as to NSTAR, Inc. The parties are filing on this date a joint motion to dismiss this case as to the defendant NSTAR, Inc. without prejudice. The parties understand and agree that members of the class can achieve the relief provided for under this Settlement without NSTAR, Inc. as a party to this action or to this Settlement. The parties understand and agree that this action can have no preclusive effect with respect to the claims of any class member against any person or entity who is not a party to this agreement.

12. Certification for Settlement Only. The NSTAR Entities do not consent to certification of the Settlement Classes for any purpose other than to effectuate the settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms, or the Settlement does not become final for any reason, the order certifying the Settlement Classes, and all preliminary and/or final findings regarding the Court's provisional class certification order, shall be automatically vacated upon notice of same to the Court, and the Action shall proceed as though the Settlement Classes had never been certified and such findings had never been made, without prejudice to any party to either request or oppose class certification on any basis, including but not limited to lack of jurisdiction. In such event, the NSTAR Entities shall also be entitled to raise any jurisdictional or other challenges or defenses to the complaint or any claims for legal or equitable relief or damages of any kind, and Plaintiffs, Class Counsel and members of the Settlement Classes shall be barred and estopped from asserting that the NSTAR Entities' conduct or actions in negotiating and proposing the Settlement through and including the termination of the Settlement constituted a waiver or other bar (including but not limited to laches) to the assertion of any such challenges or defenses.

13. Motion for Entry of Initial Order. As soon as practicable after this Stipulation has been executed, Plaintiffs shall move the Court for preliminary approval of the Settlement and

provisional certification of the Settlement Classes for purposes of implementing the Settlement.

Plaintiffs shall apply for an Order substantially in the form annexed hereto as Exhibit D (the "Order"), providing, among other things:

(a) That for purposes of settlement only, the requirements for provisional certification of the Settlement Classes have been satisfied, this action shall be maintained and proceed as a class action, pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, on behalf of the Settlement Classes, and the Plaintiffs and Class Counsel shall be appointed as representatives of the Settlement Classes;

(b) That the Settlement is preliminarily approved as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Classes;

(c) That the Notice of Proposed Class Action Settlement substantially in the form annexed hereto as Exhibits E-1 and E-2 (the "Notice") is approved by the Court; and that the mailing of the Notice in the manner and form set forth in the Order meets all the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure, the Constitution of the United States, and any other applicable law, constitutes the best notice practicable under the circumstances, and shall constitute valid, due and sufficient notice to all persons entitled thereto;

(d) That the Order and form of judgment substantially in the form of Exhibit F hereto is approved;

(e) That a hearing or hearings (the "Settlement Hearing") shall be held before this Court, at the respective time and date to be set by the Court, to consider and determine whether the requirements for final certification of the Settlement Classes have been met and whether the proposed Settlement of the Action on the terms and conditions set forth in the Stipulation, including as part of the settlement the payment of Class Counsel's attorneys' fees and reimbursement of expenses, is fair, reasonable and adequate and should be approved by the Court, and whether the judgment approving the Settlement and dismissing the Action on the merits and with prejudice against Plaintiffs and members of the Settlement Classes should be entered, and to consider such other matters as may properly come before the Court in connection with the Settlement Hearing;

(f) That the Settlement Hearing may, from time to time and without further notice to the Settlement Classes (except those who filed timely and valid objections), be continued or adjourned by order of the Court;

(g) That all members of the Settlement Classes will be bound by the Final Order dismissing the Action on the merits and with prejudice;

(h) That any objections by any member of the Settlement Classes to: (i) the certification of the Settlement Classes and the proposed settlement contained in the Settlement Agreement and described in the Notice and/or (ii) the entry of the Final Order, shall be heard and any papers submitted in support of such objections shall be considered by the Court at the Settlement Hearing only if, on or before a date (or dates) to be specified in the Notice and Order, such objector files with the Court a notice of his or her intention to appear, submits documentary proof that he or she is a member of the Settlement Classes, states the basis for such objections, and serves copies of the foregoing and all other papers in support of such objections upon counsel for the parties identified in the Notice so that such papers are actually received by such counsel by the date set by the Court; and

(i) That the parties shall file and serve all papers in support of the application for final approval of the settlement and/or in response to any valid and timely objections received by the designated counsel for the parties identified in the Notice on or before a date (or dates) set by the Court.

14. Order and Final Judgment. If, at or after the Settlement Hearing, the Settlement (including any modification thereto made with the consent of the parties as provided for herein) shall be approved by the Court, Plaintiffs shall promptly request the Court to enter an Order and Final Judgment (the "Final Order") substantially in the form attached hereto as Exhibit F that contains language:

(a) Finding that the numerosity, commonality, typicality, adequacy and superiority requirements necessary for certification of the Settlement Classes on a full and fair basis have been satisfied, approving both the final certification of the Settlement Classes and the Settlement, judging its terms to be fair, reasonable and adequate and in the best interests of the Settlement Classes, directing consummation of the Settlement in accordance with its terms and provisions and ordering implementation of its terms and procedures;

(b) Dismissing the Action and the Released Claims as to the NSTAR Entities on the merits, with prejudice and without costs except as herein provided, against Plaintiffs and all members of the Settlement Classes, and releasing and discharging the Released Claims;

- (c) Reserving continuing and exclusive jurisdiction to implement, enforce, administer, effectuate, and interpret the Settlement and this Stipulation; and
- (d) Awarding attorneys' fees and expenses to Class Counsel, or reserving jurisdiction with respect thereto.

15. Definition of Finality. The approval by the Court of the Settlement proposed by the Stipulation shall be considered final, and the Settlement shall be considered final (and the NSTAR Entities' obligations hereunder shall arise) for purposes of this Stipulation, on the date five business days after the Final Order becomes "final." As used in this Stipulation, "final" means: (a) upon the entry by the Court of the Final Order and when the applicable period for the filing or noticing of an appeal of such Final Order shall have expired without an appeal having been filed; or (b) if an appeal is taken, upon entry of an order affirming the Final Order and when the applicable period for the filing or noticing of an appeal or petition for review of such affirmance of the Final Order shall have expired without a further appeal or petition for review having been filed, or upon entry of any stipulation dismissing any such appeal with no right of further prosecution of the appeal; or (c) if an appeal is taken from or a petition for review is filed relating to any decision affirming the Final Order, upon entry of an order in such appeal finally affirming the Final Order or dismissing such petition for review without right of further appeal or upon entry of any stipulation dismissing any such appeal with no right of further prosecution of the appeal. None of the obligations of the NSTAR Entities pursuant to the Settlement shall become effective until the Settlement becomes final. Notwithstanding the above, the NSTAR Entities shall have the option to declare the Settlement effective and final upon approval by this Court or upon such approval having been finally affirmed on appeal or no appeal therefrom having been taken within the applicable time period limiting the taking of such an appeal.

16. Class Counsel Application for Attorneys' Fees and Expenses. Plaintiffs' counsel shall apply to the Court for approval of an award of attorneys' fees, plus reimbursement of costs and expenses (including experts' fees). The NSTAR Entities will assent to this motion. As an additional benefit to the Settlement Classes, any expenses and fees so awarded shall be paid by the NSTAR Entities (subject to the limits in the following sentence) and shall not diminish the benefits of the Settlement to the Settlement Classes. Class Counsel shall apply for an award of fees and expenses not to exceed \$217,500, and the NSTAR Entities shall not object to Class Counsel's request for fees and expenses up to that amount and will pay such amount if awarded by the Court subject to the terms of this Stipulation. The NSTAR Entities agreed to the payment of such fees and expenses only after reaching agreement upon all other material terms of this Settlement. Any attorneys' fees and expenses so awarded to Class Counsel shall not be payable unless and until the Final Order becomes final. Any attorneys' fees and expenses awarded to Class Counsel shall be paid as the Court may direct within ten business days after the Settlement becomes final.

16.1 Except as expressly provided in this Stipulation, the NSTAR Entities shall not be liable for any additional fees or expenses of any plaintiff or Settlement Class Member in connection with the Action. If any application is made to this Court by a person other than those identified in this Stipulation for an award of attorneys' fees or expenses with regard to this Settlement, the NSTAR Entities shall not be restricted from opposing such application. Class Counsel agree that they will not seek any additional fees or costs (whether for service provided before or after the approval of this Stipulation) from the NSTAR Entities in connection with the Settlement of this Action.

17. Notice and Administration Costs. The NSTAR Entities will pay the costs of preparing and mailing the Notice to Class Members and all other settlement administration costs. Plaintiffs and Class Counsel shall have no responsibility for any such costs regardless of whether the Settlement is consummated.

17.1 The Notice of the proposed Settlement shall be provided to each member of the Settlement Classes by first-class mail in accordance with the terms and conditions of the Order. If a Notice sent by the NSTAR Entities to a member of the Settlement Classes in accordance with the Order is returned with a forwarding address provided by the Postal Service, the NSTAR Entities will cause it to be remailed to the address provided. If a Notice is returned without a forwarding address provided by the Postal Service, or is otherwise designated by the Postal Service as being an invalid address, the NSTAR Entities shall not be required to take further steps to provide the Notice to such Class Members.

18. Effect of Settlement Not Being Final. In the event that the Stipulation is terminated in accordance with its terms, or the Settlement as provided for in this Stipulation is not approved by the Court or otherwise does not become final or effective for any reason, then the Stipulation shall become null and void and of no further force and effect with respect to the parties, all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all parties hereto and their respective predecessors and successors, and all parties and their respective predecessors and successors shall be restored to their respective positions existing as of the date of the Stipulation. In such event, this Stipulation, to the extent permitted by law, shall not be used in any action or proceeding for any purpose and any Order entered in accordance with the terms of the Stipulation shall be treated as vacated, nunc pro tunc.

19. No Admissions. This Stipulation, and all negotiations, statements, proceedings, acts performed and documents executed or exchanged pursuant to or in connection or furtherance of the Stipulation are not, and shall not in any event: (i) be construed as or used as, or deemed to be evidence of, the validity of any claim, an admission or concession on the part of the NSTAR Entities of any liability of or wrongdoing by the NSTAR Entities, or a waiver of any claim, defense or argument; or (ii) be offered or received in evidence, or used in any way as an admission, concession or evidence of any fault, omission, liability or wrongdoing of any nature on the part of the NSTAR Entities, or a waiver of any claim, defense, or argument, in either case in any action or proceeding in any court, legislative session or hearing, administrative agency or other tribunal. This Stipulation and the Settlement also shall not be construed as, or deemed to be evidence of, an admission or concession that the Plaintiffs or any member of the Settlement Classes have suffered any damage, or on the part of the Plaintiffs or any member of the Settlement Classes, that any of their claims asserted in the Action are without merit or that damages recoverable in the Action do not exceed the aggregate of the amounts payable pursuant to this Stipulation.

20. Confirmatory Discovery and Other Proceedings. The NSTAR Entities shall continue to cooperate in the production of relevant information to Plaintiffs regarding the merits of and the scope of Plaintiff's claims. Within forty-five (45) days of executing this Stipulation, the NSTAR Entities agree to designate and make available current employees who are knowledgeable as to the NSTAR Entities' investigation of billing and service classification procedures for confirmatory interviews or depositions related to: (i) the NSTAR Entities records concerning Settlement Class Members and potential settlement refund credit amounts; and (ii) the extent, nature and procedures used by the NSTAR Entities in their search for Class Member

billing and classification records. Any such information provided in the course of such confirmatory discovery shall be protected by and subject to the terms and conditions of the Confidentiality Stipulation dated November 30, 2001.

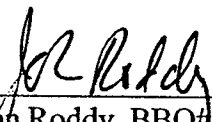
21. Due Authority of Attorneys. Each of the attorneys executing this Stipulation on behalf of a party hereto warrants and represents that he or she has been duly authorized and empowered to execute this Stipulation on behalf of each such respective party.

22. Extensions of Time. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation, provided such agreements to extend time are signed by counsel for the parties and filed with the Court.

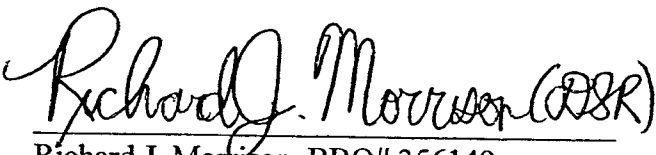
23. Entire Agreement; Amendments; Interpretation. This Stipulation, including all Exhibits annexed hereto, constitutes the entire agreement among the parties and supersedes any prior or contemporaneous agreements or understandings between them relating to the subject matter hereof. This Stipulation may not be modified or amended except in a writing signed by or on behalf of all parties hereto or their successors-in-interest. All the Exhibits are material and integral parts hereof, and all terms of this Stipulation are contractual and not mere recitals and shall be construed as if drafted by all parties hereto.


24. Successors. All provisions of this Stipulation are and shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns; all parent, subsidiary and related corporations and entities, divisions, employees, agents, directors, officers and attorneys of any settling party hereto and all other persons claiming any interest in the subject matter hereto through any of the parties hereto, including Plaintiffs and any Settlement Class Member. The entity NSTAR is specifically excepted from the provisions of paragraph 24.

IN WITNESS WHEREOF, the parties have executed this Stipulation individually as of
the date first above written.



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January 7, 2002

<CUST_NAME>
<SUPPL_NAME>
<MAIL_STREET>
<MAILING_TOWN>, <MAILING_STATE> <MAIL_ZIP>

Dear Customer:

We are writing to inform you of a forthcoming credit to your account and to briefly explain the reasons we are issuing this credit.

In April of this year a class action lawsuit was filed against NSTAR Electric by the law firm of Grant & Roddy, concerning possible errors in NSTAR Electric's billing system. Upon further review, we determined that certain customers were inadvertently billed for Default Service instead of Standard Offer Service.

NSTAR Electric is working to immediately correct this error. Customers, like you, that we identified as being on the wrong rate will receive 100% reimbursement of the overcharge through a credit applied directly to their bills.

If you refer to the Supplier Services section of your bill, you will see a reference to Default Service. Default Service is the service customers receive if they do not qualify for Standard Offer Service or are not receiving service from a Competitive Supplier.

Through November 2000, the Default Service rate and the Standard Offer Service rate were the same. Beginning in December 2000, prices for Default Service became more expensive than Standard Offer Service. Because our records indicate that you should have been placed on Standard Offer Service, we will issue a credit to your account and place you on the correct rate.

You do not need to do anything to receive this credit. We will apply it to your account automatically. If you already paid your bill, this credit can be used toward your next month's charges.

In a few days, you will receive a corrected bill with the appropriate credit made to your account. We calculated your credit based on the amount of electricity you used since December 1, 2000 priced at the lower Standard Offer Service rate. Your future bills for this account will be charged at our Standard Offer Service rate.

We are sorry for any inconvenience that this may have caused. If you have any questions regarding this rate change, please call 1-800-419-0724.

Thank you.

Customer Service

<CREATE_OPID>

<LETTER_TYPE_CD> <SEQ_NUM>

(#312)

B



NSTAR Electric & Gas Corporation
One NSTAR Way, Westwood, Massachusetts 02090-9230

LETTER START

DETAIL START
<fo-N12>

January 7, 2002

<CUST_NAME>
<SUPPL_NAME>
<MAIL_STREET>
<MAILING_TOWN>, <MAILING_STATE> <MAIL_ZIP>

Dear Customer:

We are presently reviewing our records to help us further ensure that our customers, including Default Service customers such as you, are on the correct rate. In April of this year a class action lawsuit was filed against NSTAR Electric by the law firm of Grant & Roddy, concerning possible errors in NSTAR Electric's billing system. Upon further review, we determined that certain customers were inadvertently placed on Default Service instead of Standard Offer Service. However, NSTAR is unable to determine, without additional information from you, whether you are eligible for Standard Offer Service.

If you refer to the supplier section of a previous bill, you will see a reference to Default Service. Default Service is the service customers receive if they do not qualify for Standard Offer Service or are not receiving service from a Competitive Supplier. Through November 2000, the Default Service rate and the Standard Offer Service rate were the same. However, beginning in December 2000, prices for Default Service became more expensive than the prices for Standard Offer Service.

We want you to know that any customer of Boston Edison who was a Standard Offer Service customer on March 1, 1998, and has been a continuous Boston Edison Company customer since that time is entitled to be served under the currently less expensive Standard Offer Service rate. You are considered to be a continuous customer even if you have moved to a new location within the Boston Edison Company service territory or have terminated your service for a period of not more than 90 days.

If you believe that you may have been eligible to remain a Standard Offer Service please call 1-866-249-0629, so that we can investigate this matter. In the event that your correct rate is the Standard Offer Service rate, we will place you on that rate immediately and make adjustments to your account to reflect the lower Standard Offer rates which have been in effect since last December.

Thank you for your assistance in this matter.

Customer Service

Your account number is <ACCOUNT_NUMBER>

(# 337)



NSTAR Electric & Gas Corporation
One NSTAR Way, Westwood, Massachusetts 02090-9230

LETTER START

DETAIL START
<fo=N12>

January 14, 2002

<CUST_NAME>
<SUPPL_NAME>
<MAIL_STREET>
<MAILING_TOWN>, <MAILING_STATE> <MAIL_ZIP>

Dear Customer:

We are presently reviewing our records to help us further ensure that our customers, including Default Service customers such as you, are on the correct rate. In April of this year a class action lawsuit was filed against NSTAR Electric by the law firm of Grant & Roddy, concerning possible errors in NSTAR Electric's billing system. Upon further review, we determined that certain customers were inadvertently placed on Default Service instead of Standard Offer Service. However, NSTAR is unable to determine, without additional information from you, whether you are eligible for Standard Offer Service.

If you refer to the supplier section of a previous bill, you will see a reference to Default Service. Default Service is the service customers receive if they do not qualify for Standard Offer Service or are not receiving service from a Competitive Supplier. Through November 2000, the Default Service rate and the Standard Offer Service rate were the same. However, beginning in December 2000, prices for Default Service became more expensive than the prices for Standard Offer Service.

We want you to know that any customer of Commonwealth Electric Company who was a Standard Offer Service customer on March 1, 1998 and has been a continuous Commonwealth Electric Company customer since that time is entitled to be served under the currently less expensive Standard Offer Service rate. You are considered to be a continuous customer even if you have moved to a new location within the Commonwealth Electric Company service territory or have terminated your service for a period of not more than 90 days.

If you believe that you may have been eligible to remain a Standard Offer Service please call 1-866-249-0629, so that we can investigate this matter. In the event that your correct rate is the Standard Offer Service rate, we will place you on that rate immediately and make adjustments to your account to reflect the lower Standard Offer rates which have been in effect since last December.

Thank you for your assistance in this matter.

Customer Service

Your account number is <ACCOUNT_NUMBER>



NSTAR Electric & Gas Corporation
One NSTAR Way, Westwood, Massachusetts 02090-9230

LETTER START

DETAIL START
<fo=N12>

January 14, 2002

<CUST_NAME>
<SUPPL_NAME>
<MAIL_STREET>
<MAILING_TOWN>, <MAILING_STATE> <MAIL_ZIP>

Dear Customer:

We are presently reviewing our records to help us further ensure that our customers, including Default Service customers such as you, are on the correct rate. In April of this year a class action lawsuit was filed against NSTAR Electric by the law firm of Grant & Roddy, concerning possible errors in NSTAR Electric's billing system. Upon further review, we determined that certain customers were inadvertently placed on Default Service instead of Standard Offer Service. However, NSTAR is unable to determine, without additional information from you, whether you are eligible for Standard Offer Service.

If you refer to the supplier section of a previous bill, you will see a reference to Default Service. Default Service is the service customers receive if they do not qualify for Standard Offer Service or are not receiving service from a Competitive Supplier. Through November 2000, the Default Service rate and the Standard Offer Service rate were the same. However, beginning in December 2000, prices for Default Service became more expensive than the prices for Standard Offer Service.

We want you to know that any customer of Cambridge Electric Light Company who was a Standard Offer Service customer on March 1, 1998 and has been a continuous Cambridge Electric Light Company customer since that time is entitled to be served under the currently less expensive Standard Offer Service rate. You are considered to be a continuous customer even if you have moved to a new location within the Cambridge Electric Light Company service territory or have terminated your service for a period of not more than 90 days.

If you believe that you may have been eligible to remain a Standard Offer Service please call 1-866-249-0629, so that we can investigate this matter. In the event that your correct rate is the Standard Offer Service rate, we will place you on that rate immediately and make adjustments to your account to reflect the lower Standard Offer rates which have been in effect since last December.

Thank you for your assistance in this matter.

Customer Service

Your account number is <ACCOUNT_NUMBER>

D

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

**Order Certifying Class For Settlement, Granting Preliminary Approval Of
Settlement And Concerning Notice And Scheduling**

Plaintiffs Sharon Dwyer, Julie Edwards and George Graziano in the above-captioned action (the "Action") and the defendants NSTAR Electric & Gas Corporation, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), and Cambridge Electric Light Company ("Cambridge") (collectively the "NSTAR Entities"), having made application pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure for an order approving the proposed settlement of the Action in accordance with a Stipulation and Agreement of Compromise and Settlement filed with the Court (the "Settlement" or the "Stipulation"), which sets forth the terms and conditions for the proposed settlement of the claims against the NSTAR Entities and for the dismissal of the claims against the NSTAR Entities with prejudice upon the terms and conditions set forth in the Stipulation; and the Court having read

and considered the Stipulation and accompanying documents; and the parties having consented to the entry of this Order:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The claims raised against the NSTAR Entities in this Action shall, for the purposes of the Settlement only, be maintained and proceed as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, on behalf of the following two classes (the "Settlement Classes") as set forth in the Stipulation:

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

- a) who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and
- b) who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

- a) who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or
- b) who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

The Court determines, for purposes of the Settlement only, that with respect to these classes the requirements of Rules 23 of the Massachusetts Rules of Civil Procedure are satisfied.

2. A hearing (the "Settlement Hearing") shall be held before the Court on

_____, 2002, at _____ .m. at the Suffolk Superior Court, 90 Devonshire Street, Boston, Massachusetts, 02108: (a) to determine whether the requirements for class certification are met; (b) to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be approved by the Court, and whether a judgment as provided in the Stipulation should be entered thereon; and (c) to consider such other matters as may properly come before the Court in connection with the Settlement Hearing. The Court may continue or adjourn the Settlement Hearing, or any adjournment thereof, without further notice to members of the Settlement Class other than by announcement at the Settlement Hearing or any adjournment thereof.

3. The Court, having been preliminarily apprised of the facts and the law, and the terms of the Settlement, finds that the Settlement appears to be fair, reasonable and adequate.

4. For purposes of settlement, the named plaintiffs shall serve as Class Representatives, and plaintiffs' counsel are found to be adequate and competent and are appointed as Class Counsel for the Settlement Class.

5. The Court approves, in form, the Notice of Proposed Class Action Settlement (the "Notice") to be provided to members of the Boston Edison Settlement Class and Cambridge/Commonwealth Settlement Class, attached to the Stipulation as Exhibits E1 and E2, respectively; and finds that the dissemination of the Notice in substantially the manner and form set forth in paragraph 6 of this Order meets the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure and due process, is the best notice practicable under the circumstances, and shall constitute valid, due and sufficient notice to all persons entitled thereto.

6. Beginning no later than ten (10) days following entry of this Order, the

NSTAR Entities shall cause a copy of the Notice to be mailed by first class mail to all persons who are identified as members or potential members of the Settlement Class pursuant to the identification process provided for in the Stipulation.

7. Any member of the Settlement Classes may appear at the Settlement Hearing personally or by counsel, provided that an appearance is served and filed as hereinafter provided, and show cause, if any, why either class should not be certified or the Settlement of the Action should not be approved as fair, reasonable, and adequate, why judgment should not be entered dismissing with prejudice and releasing all claims of all plaintiffs and all members of the Settlement Classes against the NSTAR Entities (as provided for in the Stipulation), or why the Court should not grant an allowance of reasonable fees and expenses to plaintiffs' counsel for their services herein and actual expenses incurred. However, unless the Court otherwise directs, no member of the Settlement Class, or any person (excluding a party), shall be heard or shall be entitled to contest certification and the approval of the terms and conditions of the Settlement or (if approved) the judgment to be entered thereon, or the allowance of fees and expenses to plaintiffs' counsel, and no papers or briefs submitted by any member of the Settlement Classes or any other person (excluding a party) shall be received and considered, except by order of the Court for good cause shown, unless, no later than twenty (20) days prior to the Settlement Hearing, the following documents are served and filed in the manner provided below: (a) a notice of intention to appear; (b) a detailed statement of such person's specific objections to any matter before the Court; (c) documentary proof of membership in the relevant Settlement Class; and (d) the grounds for such objections and any reasons why such person desires to appear and to be heard, as well as all documents and writings which such person desires this Court to consider. Such documents shall be served upon the following counsel prior to filing

such documents with the Court:

Plaintiffs' Counsel

John Roddy
Gary Klein
Grant & Roddy
44 School Street
Boston, MA 02108

Defendants' Counsel

David S. Rosenzweig
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110

Any person who fails to object in the manner provided herein shall be deemed to have waived his or her objections and shall forever be barred from making any such objections in this Action or in any other action or proceeding.

Dated: January ____, 2002

, J.

E-1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf,
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION.,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**To Customers Of The NSTAR Electric Companies: Boston Edison, Commonwealth Electric
And Cambridge Electric**

**You are NOT being sued.
You need NOT respond to this notice in any way.**

Dear NSTAR Electric Customer,

This notice informs you of a proposed settlement of class action claims against NSTAR Electric & Gas Corporation, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), and Cambridge Electric Light Company ("Cambridge"). For the sake of brevity and clarity, these companies will be referred to for the remainder of this notice simply as NSTAR Electric, except where it is necessary to distinguish between them. This notice describes the proposed settlement and informs you of your rights as a settlement class member. You are being sent this notice because you have been identified as an NSTAR Electric customer who paid for higher priced "default service" for a period of time when you should have been billed for lower priced "standard offer service". NSTAR Electric has agreed, under the terms of the settlement, to provide you with a complete refund, in the form of a credit to your NSTAR Electric bill, for all overcharges. You may already have received this credit.

READ THIS FIRST

WHY SHOULD I READ THIS? This Notice describes a proposed settlement of a class action against NSTAR Electric, and you have been identified as a class member.

WHY DID I RECEIVE THIS NOTICE? You received this Notice because a search of NSTAR Electric's computer records shows that you paid for electricity at the higher priced "default service" rate when you should have paid at the lower priced "standard offer service" rate.

DO I HAVE TO DO ANYTHING? If the court approves the settlement and it becomes effective, you do not need to do anything. You are entitled to a refund credit under the settlement, and it is likely that the credit has already been provided to you. If you have not yet received a credit, a credit will be provided to you as part of the settlement without the need for you to file a claim or do anything else. You may attend the court hearing described below if you wish, but your attendance or non-attendance will not affect your receipt of a credit. You do not need to appear in court; and you do not need to hire an attorney in this case. You may object to the proposed settlement if you so desire.

WHOM CAN I CALL WITH QUESTIONS? If you have questions, you may call a special Settlement Administration line at 1-800-419-0724 weekdays, 9:00 a.m. to 5:00 p.m.

WHOM CAN I CALL ABOUT A CHANGE OF ADDRESS? If your present address is different from the address on the envelope in which you received this Notice, or if you did not receive this Notice directly but believe you should have, you should call the Settlement Administration line at 1-800-592-2000 and provide your new address.

The Basis Of The Claims Against NSTAR Electric

In 1997 a new state law was enacted to foster competition in the electric generation market. Chapter 164 of the Acts of 1997. Among other things, this law gave existing customers of electric utilities as of March 1, 1998 the right to receive the so-called "standard offer service rate" instead of the "default service rate" as long as they didn't move outside the utility's service area, choose another supplier of electricity, or discontinue service for an extended period of time. The law entitles standard offer service rate customers to receive that rate from March 1, 1998 until February 28, 2005, as long as they meet certain conditions.

This case was filed on April 23, 2001 by certain NSTAR Electric customers (the "Plaintiffs") in the Suffolk Superior Court, in Boston, Massachusetts (the "Action"). By bringing the Action, the Plaintiffs sought to obtain "standard offer service" and the lower rates currently obtained thereby for all NSTAR Electric customers so entitled. Plaintiffs alleged that NSTAR Electric had misclassified them and other similarly situated customers by placing them on "default service", which presently carries higher rates. Through November 2000, the default service rate and the standard offer rate were the same. Beginning in December 2000, prices for default service became more expensive than Standard Offer Service. The Plaintiffs' sought reimbursement for the difference between the higher priced default rate they paid and the lower priced standard offer service rate to which they were entitled.

Plaintiffs alleged that, between March 1, 1998 and December 1, 2000, NSTAR Electric failed to maintain procedures sufficient to ensure that customers who moved within their respective service areas would retain standard offer service. As such, Plaintiffs complained that they and the class members had been damaged by having paid the higher default service rate for their electric service during the period they were placed upon default service. Plaintiffs sought, among other things, a judgment declaring NSTAR Electric's conduct unlawful, a court order requiring NSTAR Electric to reclassify incorrectly classified customers, and the fund of overcharges paid.

The Proposed Settlement

Since filing the Action, Plaintiffs, through class counsel, the Boston law firm of Grant & Roddy, have conducted an investigation of the facts, including reviews of NSTAR Electric's billing and classification procedures, review of the circumstances of more than one hundred individual customers' classifications, and have analyzed the relevant legal and factual issues. Plaintiffs' counsel have conducted interviews with NSTAR Electric's counsel and others concerning NSTAR Electric's policies and practices relating to service classification and billing. Plaintiffs' counsel obtained substantial information about the nature and extent of NSTAR Electric's challenged practices through this process and are confirming that information by additional formal discovery.

After an extensive exchange of information and months of vigorous arms-length negotiation, Plaintiffs and NSTAR Electric agreed to enter into a Settlement Agreement that, if approved by the court, will result in dismissal of this case and final resolution of all claims raised. Such dismissal will release NSTAR Electric from future liability for the acts and practices complained of. The Settlement terms are described in full in a document known as Stipulation and Agreement of Compromise and Settlement (hereinafter "Stipulation of Settlement"). The Stipulation of Settlement is available for your inspection at the clerk's office of the court at the address given below. The terms of the settlement, in summary form, are as follows:

a) Under the settlement, NSTAR Electric either has issued or will issue a credit to you and to every other class member's NSTAR Electric account equal to 100% of the difference between the default service rate the class member improperly paid and the standard offer rate to which the class member was entitled. Although the final total of credits issued is unknown at this time because of the ongoing process of reviewing the claims of non-identified class members, NSTAR Electric has already issued credits of approximately \$1.45 million;

(b) You and other members of the Settlement Classes, as defined below, have been or will be reclassified as standard offer service customers and will thereby receive standard offer service and be charged such standard offer service rates for as long as you and they continue to be eligible for such rates;

(c) The Settlement provides for members of the Settlement Classes to be reclassified and receive a refund credit in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims asserted to be litigated through trial and potential appeal, even if such claims were to be found to be meritorious in all respects; in fact, more than 23,000 class members have already been provided their credits and reclassified to the standard offer service rate; and

(d) The Settlement provides for significant monetary and other benefits to you and other members of the Settlement Classes beyond reclassification and refund credit, including:

(i) the Settlement obliges NSTAR Electric, at its sole expense, to identify members of the Settlement Classes who were misclassified based on NSTAR Electric's records, to the maximum extent practicable, and to provide the benefits of the Settlement to such persons without their having to take any affirmative steps;

(ii) the settlement obliges NSTAR Electric to notify potential class members who could not be identified from its records, provide a toll-free telephone number for them to contact regarding their possible misclassification, and provide reclassification and a refund credit to those who respond and who are then determined to be misclassified;

(iii) that NSTAR Electric, in settling these claims, will not assert claimed defenses available to it, whether procedural or substantive; and

(iv) attorneys fees and expenses payable to class counsel will be paid by NSTAR Electric rather than from any funds that would otherwise be available to you and other members of the Settlement Classes.

Notwithstanding its agreement to settle this case, NSTAR Electric denies all allegations of wrongdoing, denies liability to Plaintiffs, and in settling the case admits no wrongdoing or liability of any kind. NSTAR Electric vigorously maintains that it has valid defenses to all claims raised in the case, and would prevail if the litigation were to proceed. The court has not ruled on the merits of Plaintiffs' claims or NSTAR Electric's potential defenses, and this Notice is not to be considered as an expression of opinion by the court. NSTAR Electric has also weighed the risks and possible costs of litigation of the Action against the benefits of the proposed Settlement, and considers it desirable that the claims be settled on a global basis to avoid the time, risk, and expense of defending protracted litigation and in order to achieve a final resolution of the claims being settled.

The Settlement Classes

The court will be asked to confirm certification of two classes for the purposes of settlement, the "Boston Edison Settlement Class", and the "Cambridge/Commonwealth Settlement Class."

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and

who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or

who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

For purposes of the Settlement, the term "Settlement Class Member" means any person who falls within the definition of either Settlement Class.

For the purposes of the Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and

the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

Each class includes a group of identified and a group of non-identified class members. The group of identified members of each class consists of those persons whose membership in the class has been established by use of various searches of NSTAR Electric's computerized information. Your receipt of this notice means you are an identified class member.

Attorneys' Fees And Class Representative Compensation

Plaintiffs' counsel will request that the courts award them attorneys' fees and expenses. They intend to request \$217,500 in fees and expenses. The \$217,500 figure was determined independently of negotiation of the other terms of the settlement. Plaintiffs' petition for fees and expenses will be filed with the court no later than May 20, 2002, and may be reviewed at the Court by any interested party. The named class representatives will request that the court award them compensation of \$1,000 each for their extra time, effort, and expense in bringing this case and prosecuting it to a successful conclusion as representatives of the class. Both the amount paid for attorney's fees and expenses and the amounts paid to the named representatives will be paid by NSTAR Electric, and so will not diminish or affect the complete reimbursement which class members will receive from the common fund established by the settlement.

The Settlement Fairness Hearing

The court will conduct a hearing (the "Fairness Hearing") at the Suffolk Superior Courthouse at 90 Devonshire Street, Boston, MA 02108 on June 3, 2002 (or at the dates and times to which the court may, without further notice, reschedule the hearing). The purpose of the Fairness Hearing will be to determine whether the proposed settlement is fair, adequate, and proper; and whether the courts should enter judgments approving the settlement, approving payments to class representatives, awarding attorneys' fees and expenses, and dismissing the class action. You have the right but are not required to attend. Attendance or non-attendance will not affect any distribution to which you may be entitled under the Settlement.

Your Right To Appear And Object To The Proposed Settlement

Any member of the classes may appear at the Fairness Hearing in person or by a duly authorized attorney and show cause, if any, why the settlement should not be approved; provided that (except by special permission of the court) no class member shall be heard unless, on or before May 13, 2002, the class member files with the court a written "Notice of Intent To Appear", to the clerk's address set out below, setting forth all of that class member's objections to the settlement, and mails copies of all such papers to Plaintiffs' and NSTAR Electric's counsel at the addresses specified below:

<p><u>Office of the Clerk</u></p> <p>Mr. Michael Joseph Donovan Clerk of the Court Suffolk County Superior Ct. 90 Devonshire Street Boston, MA 02108</p>	
<p><u>Plaintiffs' Counsel</u></p> <p>John Roddy Gary Klein Grant & Roddy 44 School Street Boston, MA 02108</p>	<p><u>Defendants' Counsel</u></p> <p>David S. Rosenzweig Keegan, Werlin & Pabian, LLP 21 Custom House Street Boston, MA 02110</p>

**Availability Of The Pleadings, The Stipulation Of Settlement,
And Other Papers In This Action**

The Stipulation of Settlement, with its exhibits and all other papers filed in the Action, are available for inspection in the offices of the clerk of the court identified above. The documents on file with the court may be examined by any member of the classes in person or by counsel during normal court hours each day other than on Saturdays, Sundays, and legal holidays.

Do not call or write the courts, other than as provided for above.

IF YOU HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CALL
1-800-419-0724

Dated: January 28, 2002

Clerk of the Superior Court of Massachusetts in and for Suffolk County

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf,
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION.,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**To Customers Of The NSTAR Electric Companies: Boston Edison, Commonwealth Electric
And Cambridge Electric**

**You Are NOT Being Sued.
You Must Respond To This Notice In Order To Obtain Benefits –
See The Box Labeled "READ THIS FIRST" Below.**

Dear NSTAR Electric Customer,

This notice informs you of a proposed settlement of class action claims against NSTAR Electric & Gas Corporation, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), and Cambridge Electric Light Company ("Cambridge"). For the sake of brevity and clarity, these companies will be referred to for the remainder of this notice simply as NSTAR Electric, except where it is necessary to distinguish between them. This notice describes the proposed settlement and informs you of your rights as a potential settlement class member. You are being sent this notice because you have been identified as an NSTAR Electric customer who paid for higher priced "default service" for a period of time when you **might have** been entitled to lower priced "standard offer service". NSTAR Electric has agreed, under the terms of the settlement, to provide you with a complete refund, in the form of a credit to your NSTAR Electric bill, for any overcharges you may have paid. You are eligible for this credit if, after you provide information about your account as described below, the Settlement Administrator determines that you are entitled to the "standard offer service" rate.

READ THIS FIRST

WHY SHOULD I READ THIS? This Notice describes a proposed settlement of a class action against NSTAR Electric which may affect you.

WHY DID I RECEIVE THIS NOTICE? You received this Notice because a search of NSTAR Electric's computer records shows that you paid for electricity at the "default service" rate when you **might have** been eligible for the "standard offer service" rate. NSTAR Electric does not have enough information on your particular account to determine whether you are entitled to a refund. That can be determined only after you provide additional information about your account to the Settlement Administrator. Receipt of this Notice does not mean you will necessarily receive a credit to your NSTAR Electric bill.

HOW DO I KNOW IF I AM ELIGIBLE FOR BENEFITS UNDER THE SETTLEMENT? You may be eligible for benefits as part of this settlement of class action if you fall within one of two categories:

1. You are eligible if you were a customer of Boston Edison, Commonwealth, or Cambridge on March 1, 1998, and you continue to be a customer of that same company, provided that you did not voluntarily terminate your account at any time after March 1, 1998 for a period of more than 90 days, and provided further that you did not change your supplier of electric service at any time after March 1, 1998.

2. You may be eligible if your account was transferred to you by a spouse or another closely related family member and that family member was a customer within the service territory of Boston Edison, Commonwealth, or Cambridge on March 1, 1998, provided that you or they did not voluntarily terminate your account at any time after March 1, 1998 for a period of more than 90 days, and provided further that you or they did not change your supplier of electric service at any time after March 1, 1998.

Important Note: Each company, Boston Edison, Commonwealth, and Cambridge, has a separate service area. To retain the right to standard offer service, you must have continuous service from the same NSTAR Electric company. This means that if you moved from the service area of one company to another for a period of more than 90 days you cannot obtain a benefit under this settlement. For example, if you moved from the Boston Edison to the Commonwealth Electric service area, you are not eligible for a benefit.

DO I HAVE TO DO ANYTHING? Yes, to find out if you are eligible for a refund credit you must call the Settlement Administrator at 1-866-249-0629 weekdays, 9:00 a.m. to 5:00 p.m. before June 25, 2002 and provide the following information:

- ❖ Your principal address as of March 1, 1998 and the name of the person to whom your electric bill was addressed as of that date;
- ❖ Your current address and the name of the person to whom your electric bill is now addressed; and
- ❖ Any clarifying information which may be necessary, such as whether you had any other addresses at which you received electric service since March 1, 1998.

If the court approves the settlement and it becomes effective, you will receive a refund credit under the settlement if, after you provide the information described above, the Settlement Administrator determines that you are entitled to such a credit. You will not need to file a claim or do anything else, although you may submit a written claim if you wish. You may attend the court hearing described below if you wish, but your attendance or non-attendance will not affect your receipt of a credit. You do not need to appear in court; and you do not need to hire an attorney in this case. You may object to the proposed settlement if you so desire.

WHOM CAN I CALL WITH QUESTIONS? If you have questions, you may call a Special Claims Administration line set up by NSTAR Electric at 1-866-249-0629 weekdays, 9:00 a.m. to 5:00 p.m.

WHOM CAN I CALL ABOUT A CHANGE OF ADDRESS? If your present address is different from the address on the envelope in which you received this Notice, or if you did not receive this Notice directly but believe you should have, you should call the line set up by NSTAR Electric at 1-800-592-2000 and provide your new address.

The Basis Of The Claims Against NSTAR Electric

In 1997 a new state law was enacted to foster competition in the electric generation market. This law is Chapter 164 of the Acts of 1997. Among other things, this law gave existing customers of electric utilities as of March 1, 1998 the right to receive the so-called "standard offer service rate" instead of the "default service rate" as long as they didn't move outside the utility's service area, choose another supplier of electricity, or discontinue service for an extended period of time, G.L. c. 164, §§1B(b); (d). The law entitles standard offer rate customers to receive that rate from March 1, 1998 until February 28, 2005, as long as they meet the above-described conditions.

This case was filed on April 23, 2001 by certain NSTAR Electric customers (the "Plaintiffs") in the Suffolk Superior Court in Boston, Massachusetts (the "Action"). The Action was brought on behalf of a class of electric utility customers claiming to be entitled to "standard offer service" and the lower rates currently obtained thereby. Plaintiffs alleged that NSTAR Electric had misclassified them and other similarly situated customers by placing them on "default service", which presently carries higher rates.

Plaintiffs alleged that, between March 1, 1998 and December 1, 2000, NSTAR Electric failed to maintain procedures sufficient to ensure that customers who moved within their respective service areas would retain standard offer service. As such, Plaintiffs complained that they and the class members had been damaged by having paid the higher default service rate for their electric service during the period they were placed upon default service. Plaintiffs sought, among other things, a judgment declaring NSTAR Electric's conduct unlawful, ordering NSTAR Electric to reclassify incorrectly classified customers, and requiring refund of overcharges paid.

The Proposed Settlement

Since filing the Action, Plaintiffs, through class counsel, the Boston law firm of Grant & Roddy, have conducted an investigation of the facts, including reviews of NSTAR Electric's billing and classification procedures, review of the circumstances of more than one hundred individual customers' classifications, and have analyzed the relevant legal and factual issues. Plaintiffs' counsel have conducted interviews with NSTAR Electric's counsel and others concerning NSTAR Electric's policies and practices relating to service classification and billing. Plaintiffs' counsel obtained substantial information about the nature and extent of NSTAR Electric's challenged practices through this process and are confirming that information by additional formal discovery.

After an extensive exchange of information and months of arms-length negotiation, Plaintiffs and NSTAR Electric agreed to enter into a Settlement that, if approved by the court, will result in dismissal with prejudice of this case. The Stipulation of Settlement contains all the terms of the settlement and is available for your inspection at the clerk's office of the court. Some terms of the settlement, in summary form, are as follows:

- a) Under the settlement, NSTAR Electric will issue a credit to each class member's NSTAR Electric account equal to 100% of the difference between the default service rate the class member improperly paid and the standard offer rate to which the class member was entitled. Although the final total of credits issued is unknown at this time because of the ongoing process of reviewing the claims of non-identified class members, NSTAR Electric has already issued credits of approximately \$1.45 million;
- (b) The members of the Settlement Classes, as defined below, will be reclassified as standard offer service customers and will thereby receive standard offer service and be charged such standard offer service rates for as long as they continue to be eligible for such rates;

(c) The Settlement provides for members of the Settlement Classes to receive reclassification and refund credit in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims asserted to be litigated through trial and potential appeal, even if such claims were to be found to be meritorious in all respects; in fact, more than 23,000 members have already been provided their credits and reclassified to the standard offer service rate; and

(d) The Settlement provides for significant monetary and other benefits to the members of the Settlement Classes beyond reclassification and refund credit, including:

(i) the Settlement obliges NSTAR Electric, at its sole expense, to identify members of the Settlement Classes who were misclassified based on NSTAR Electric's records, to the maximum extent practicable, and to provide the benefits of the Settlement to such persons without their having to take any affirmative steps;

(ii) the settlement obliges NSTAR Electric to notify potential class members who could not be identified from its records, provide a toll-free telephone number for them to contact regarding their possible misclassification, and provide reclassification and a refund credit to those who respond and who are then determined to be misclassified;

(iii) that NSTAR Electric, in settling these claims, will not assert claimed defenses available to it, whether procedural or substantive; and

(iv) attorneys fees payable to class counsel will be paid by NSTAR Electric rather than from any funds that would otherwise be available to the classes.

Notwithstanding its agreement to settle this case, NSTAR Electric denies all allegations of wrongdoing, denies liability to Plaintiffs, and in settling the case admits no wrongdoing or liability of any kind. NSTAR Electric vigorously maintains that it has valid defenses to all claims raised in the case, and would prevail if the litigation were to proceed. The court has not ruled on the merits of Plaintiffs' claims or NSTAR Electric's potential defenses, and this Notice is not to be considered as an expression of opinion by the court. NSTAR Electric has also weighed the risks and possible costs of litigation of the Action against the benefits of the proposed Settlement, and considers it desirable that the claims be settled on a global basis to avoid the time, risk, and expense of defending protracted litigation and in order to achieve a final resolution of the claims being settled.

The Settlement Classes

The court will be asked to confirm certification of two classes for the purposes of settlement, the "Boston Edison Settlement Class", and the "Cambridge/Commonwealth Settlement Class." The Boston Edison Settlement Class is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and

who have been continuous customers of Boston Edison at all times since March 1, 1998.

The Cambridge/Commonwealth Settlement Class is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or

who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

For purposes of this Settlement, the term "Settlement Class Member" means any person who falls within the definition of either Settlement Class. For the purposes of this Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and

the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

Each class includes a group of identified and a group of non-identified class members. The group of identified members of each class consists of those persons whose membership in the class has been established by use of various searches of NSTAR Electric's computerized information. The group of non-identified members of each class consists of those persons who, like you, **may be** members of the class, but whose identity is not ascertainable by the means and methods of data review described below. **Your receipt of this notice means you are not an identified class member and you must contact the Settlement Administrator in order to find out if you are eligible for benefits under the Settlement.**

Attorneys' Fees And Class Representative Compensation

Plaintiffs' counsel will request that the courts award them attorneys' fees and expenses. They intend to request \$217,500 in fees and expenses. As noted above, this amount for attorney's fees and expenses will be paid by NSTAR Electric and not out of the common fund from which credits are provided to class members. The \$217,500 figure was determined independently of negotiation of the other substantive terms of the settlement. Plaintiffs' petition for fees and expenses will be filed with the court no later than May 20, 2002, and may be reviewed at the Court by any interested party. The named class representatives will request that the court award them compensation of \$1,000 each for their extra time, effort, and expense in bringing this case and prosecuting it to a successful conclusion as representatives of the class. Both the amount paid for attorney's fees and expenses and the amounts paid to the named representatives will be paid by NSTAR Electric, and so will not diminish or affect the complete reimbursement which class members will receive from the common fund established by the settlement.

The Settlement Fairness Hearing

The court will conduct a hearing (the "Fairness Hearing") at the Suffolk Superior Courthouse on June 3, 2002 (or at the dates and times to which the court may, without further notice, reschedule

the hearing). The purpose of the Fairness Hearing will be to determine whether the proposed settlement is fair, adequate, and proper; and whether the courts should enter judgments approving the settlement, approving payments to class representatives, awarding attorneys' fees and expenses, and dismissing the class action. You have the right but are not required to attend. Attendance or non-attendance will not affect any distribution to which you may be entitled under the Settlement.

Your Right To Appear And Object To The Proposed Settlement

Any member of the classes may appear at the Fairness Hearing in person or by a duly authorized attorney and show cause, if any, why the settlement should not be approved; provided that (except by special permission of the court) no class member shall be heard unless, on or before May 13, the class member files with the court a written "Notice of Intent To Appear" setting forth all of that class member's objections to the settlement, and mails copies of all such papers to plaintiffs' and NSTAR Electric's counsel at the addresses specified below:

<u>Office of the Clerk</u> Mr. Michael Joseph Donovan Clerk of the Court Suffolk County Superior Ct. 90 Devonshire Street Boston, MA 02108	
<u>Plaintiffs' Counsel</u> John Roddy Gary Klein Grant & Roddy 44 School Street Boston, MA 02108	<u>Defendants' Counsel</u> David S. Rosenzweig Keegan, Werlin & Pabian, LLP 21 Custom House Street Boston, MA 02110

Availability Of The Pleadings, The Stipulation Of Settlement, And Other Papers In This Action

The Stipulation of Settlement, with its exhibits and all other papers filed in the Action, are available for inspection in the offices of the clerk of the court identified above. The documents on file with the court may be examined by any member of the classes in person or by counsel during normal court hours each day other than on Saturdays, Sundays, and legal holidays.

Do not call or write the courts, other than as provided for above.

**IF YOU HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CALL
1-866-249-0629.**

Dated: January 28, 2002

Clerk of the Superior Court of Massachusetts in and for Suffolk County

F

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

ORDER AND FINAL JUDGMENT

Plaintiffs, on behalf of themselves and the Settlement Classes, having filed an assented to motion for an order preliminarily approving the Settlement (the "Settlement"), the Court having heard the parties on this matter and reviewed the relevant materials, and having entered its Preliminary Approval order on _____, 2002 and having held a hearing regarding final approval of the Settlement on _____, 2002 at _____ m., at which ___ objections were filed with or presented to the Court; the Court being fully advised as to the Settlement and good cause appearing therefor, the Court enters its order granting final approval of the Settlement and finds and orders as follows:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action and over all parties to this action, including all members of the Settlement Classes, as defined below pursuant to this Court's preliminary approval order entered _____, 2002:

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison Company ("Boston Edison") service territory and receive electric service from Boston Edison:

- a) who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and
- b) who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge Electric Light Company ("Cambridge") or Commonwealth Electric Company ("Commonwealth") service territories and receive electric service from Cambridge/Commonwealth:

- a) who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or
- b) who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

For purposes of this Settlement, the term "Settlement Classes Member" means any person who falls within the definition of either Settlement Class. For the purposes of this Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

- a) the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and
- b) the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

2. The Settlement previously filed in this action and the Settlement set forth therein, are found and determined to be fair, reasonable, and adequate, and are hereby approved and ordered performed by all parties to such Settlement. The Court determines that the notice given to the Settlement Classes constituted the best notice practicable under the circumstances and comported with the requirements of due process; and for purposes of Settlement only, that the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure are satisfied.

3. Immediately upon entry of this Order and Final Judgment, this case shall be dismissed with prejudice, which dismissal shall be without costs to any party. The Settlement approved by this Order and Final Judgment resolves all claims and disputes between the Plaintiffs, Settlement Class Members and the NSTAR Entities (i.e., NSTAR Electric & Gas Corporation, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company) in the Action, as provided in the Settlement.

4. This Order and Final Judgment applies to all claims or causes of action settled under the terms of the Settlement, and shall be fully binding with respect to all class members.

5. This Order and Final Judgment is a final judgment and is the Order provided for in paragraph 14 of the Settlement.

6. Without affecting the finality of this Order and Final Judgment in any way, the Court retains jurisdiction over:

- a) implementation and enforcement of the Settlement until each and every act agreed to be performed by the parties to the Settlement shall have been performed;
- b) any other action necessary to conclude the Settlement and implement the Settlement; and
- c) the enforcement, construction and interpretation of the Settlement.

7. This Order and Final Judgment does not constitute an expression by the Court of any opinion, position or determination as to the merit or lack of merit of any of the claims and or defenses of the parties. Neither this Order and Final Judgment, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by defendants or be offered or received into evidence as an admission, concession, presumption, or inference of any wrongdoing by defendants in any proceeding other than such proceedings as are necessary to consummate or enforce the Settlement.

8. All objections to the Settlement are overruled and denied in all respects. The Court finds no just reason to delay entry of this Settlement order and Judgment. Accordingly, the Clerk is hereby directed forthwith to enter this Order and Final Judgment pursuant to Rule 58, Massachusetts Rules of Civil Procedure.

9. Counsel for the plaintiffs and class are awarded attorneys' fees in the amount of \$217,500, inclusive of costs, to be paid as provided in the Settlement.

10. The named plaintiffs, who were appointed and served as the Class Representatives shall be paid \$1,000 each for duly performing such representative function, which amount shall be paid by defendants as provided in the Settlement.

_____, 2002

_____, J.

B

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

Order Certifying Class For Settlement, Granting Preliminary Approval Of
Settlement And Concerning Notice And Scheduling

Plaintiffs Sharon Dwyer, Julie Edwards and George Graziano in the above-captioned action (the "Action") and the defendants NSTAR Electric & Gas Corporation, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), and Cambridge Electric Light Company ("Cambridge") (collectively the "NSTAR Entities"), having made application pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure for an order approving the proposed settlement of the Action in accordance with a Stipulation and Agreement of Compromise and Settlement filed with the Court (the "Settlement" or the "Stipulation"), which sets forth the terms and conditions for the proposed settlement of the claims against the NSTAR Entities and for the dismissal of the claims against the NSTAR Entities with prejudice upon the terms and conditions set forth in the Stipulation; and the Court having read

*Notice filed
2/1/02*

*J.R.
K.K.
B.R.*

R.M.

D.B.R.

K.H.F.

Pro

and considered the Stipulation and accompanying documents; and the parties having consented to the entry of this Order:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The claims raised against the NSTAR Entities in this Action shall, for the purposes of the Settlement only, be maintained and proceed as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, on behalf of the following two classes (the "Settlement Classes") as set forth in the Stipulation:

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

- a) who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and
- b) who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

- a) who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or
- b) who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

The Court determines, for purposes of the Settlement only, that with respect to these classes the requirements of Rules 23 of the Massachusetts Rules of Civil Procedure are satisfied.

2. A hearing (the "Settlement Hearing") shall be held before the Court on

6/3, 2002, at 2:00 p.m. at the Suffolk Superior Court, 90 Devonshire Street, Boston, Massachusetts, 02108: (a) to determine whether the requirements for class certification are met; (b) to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate and should be approved by the Court, and whether a judgment as provided in the Stipulation should be entered thereon; and (c) to consider such other matters as may properly come before the Court in connection with the Settlement Hearing. The Court may continue or adjourn the Settlement Hearing, or any adjournment thereof, without further notice to members of the Settlement Class other than by announcement at the Settlement Hearing or any adjournment thereof.

3. The Court, having been preliminarily apprised of the facts and the law, and the terms of the Settlement, finds that the Settlement appears to be fair, reasonable and adequate.

4. For purposes of settlement, the named plaintiffs shall serve as Class Representatives, and plaintiffs' counsel are found to be adequate and competent and are appointed as Class Counsel for the Settlement Class.

5. The Court approves, in form, the Notice of Proposed Class Action Settlement (the "Notice") to be provided to members of the Boston Edison Settlement Class and Cambridge/Commonwealth Settlement Class, attached to the Stipulation as Exhibits E1 and E2, respectively; and finds that the dissemination of the Notice in substantially the manner and form set forth in paragraph 6 of this Order meets the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure and due process, is the best notice practicable under the circumstances, and shall constitute valid, due and sufficient notice to all persons entitled thereto.

6. Beginning no later than ten (10) days following entry of this Order, the

NSTAR Entities shall cause a copy of the Notice to be mailed by first class mail to all persons who are identified as members or potential members of the Settlement Class pursuant to the identification process provided for in the Stipulation.

7. Any member of the Settlement Classes may appear at the Settlement Hearing personally or by counsel, provided that an appearance is served and filed as hereinafter provided, and show cause, if any, why either class should not be certified or the Settlement of the Action should not be approved as fair, reasonable, and adequate, why judgment should not be entered dismissing with prejudice and releasing all claims of all plaintiffs and all members of the Settlement Classes against the NSTAR Entities (as provided for in the Stipulation), or why the Court should not grant an allowance of reasonable fees and expenses to plaintiffs' counsel for their services herein and actual expenses incurred. However, unless the Court otherwise directs, no member of the Settlement Class, or any person (excluding a party), shall be heard or shall be entitled to contest certification and the approval of the terms and conditions of the Settlement or (if approved) the judgment to be entered thereon, or the allowance of fees and expenses to plaintiffs' counsel, and no papers or briefs submitted by any member of the Settlement Classes or any other person (excluding a party) shall be received and considered, except by order of the Court for good cause shown, unless, no later than twenty (20) days prior to the Settlement Hearing, the following documents are served and filed in the manner provided below: (a) a notice of intention to appear; (b) a detailed statement of such person's specific objections to any matter before the Court; (c) documentary proof of membership in the relevant Settlement Class; and (d) the grounds for such objections and any reasons why such person desires to appear and to be heard, as well as all documents and writings which such person desires this Court to consider. Such documents shall be served upon the following counsel prior to filing

such documents with the Court:

Plaintiffs' Counsel

John Roddy
Gary Klein
Grant & Roddy
44 School Street
Boston, MA 02108

Defendants' Counsel

David S. Rosenzweig
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, MA 02110

Any person who fails to object in the manner provided herein shall be deemed to have waived his or her objections and shall forever be barred from making any such objections in this Action or in any other action or proceeding.

Geraldine B. Jones
J.

Dated: January 28, 2002

C

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

Affidavit of Antonio Simas

I, Antonio Simas, with a business address at One NSTAR Way, Westwood, Massachusetts 02090, after being duly sworn depose and state as follows:

1. I am Manager of Credit and Collections at NSTAR Electric & Gas Corporation ("NSTAR Electric"), the service company affiliate of Boston Edison Company, Commonwealth Electric Company and Cambridge Electric Light Company. I am responsible for: (1) the design, implementation and maintenance of Corporate and Collection policies and procedures; (2) overseeing new customers and extension of credit lines; (3) working to ensure the integrity of Credit and Collection systems and

data; (4) implementing new, and changes to existing, Department of Telecommunications and Energy rules and regulations; and (5) minimizing bad debt by establishing Legal Credit and Collections systems and practices.

2. I am familiar with the class action lawsuit filed on behalf of NSTAR Electric's Standard Offer Service customers who had been misclassified as Default Service customers. With regard to that lawsuit, I was responsible for the various mailings that were undertaken by NSTAR Electric to inform customers about the pending litigation and the process of investigating customer inquiries.

3. The first two mailings were informal mailings undertaken by NSTAR Electric, with the knowledge and consent of plaintiffs' counsel, in order to communicate the issues raised by the lawsuit to our customers. One such informal notice was sent to all of NSTAR Electric's "identified class members" and informed those customers that they were on the wrong rate, that NSTAR Electric was transferring them to the correct rate, and that they would receive a credit to their account for the cost differential. The second informal notice was sent to all of NSTAR Electric's "non-identified" class members and informed those customers that they may be on the wrong rate, explained the eligibility requirements for Standard Offer Service, and encouraged customers to call NSTAR Electric to investigate their status. The informal mailings to identified customers occurred during October 1, 2001 to November 30, 2001 and the informal mailings to non-identified customers occurred during December 7, 2002 to January 25, 2002.

4. The second two mailings were the formal "Notice of Proposed Class Action Settlement" sent as a result of the Settlement Agreement between the parties. The first formal mailing began on February 8, 2002, ended on February 25, 2002, and went to all "identified" class members in the form approved by the Court. The second formal mailing began on February 26, 2002, ended on April 12, 2002, and went to all "non-identified" class members in the form approved by the Court.

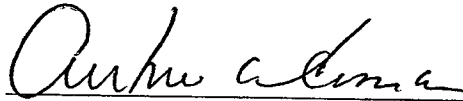
5. Also, in conjunction with this lawsuit, I oversaw the call center and the procedures implemented to address customer inquiries related to the lawsuit. Calls were received by operators from CCS of Newton, a customer service company frequently used by NSTAR Electric. When customers called with questions regarding their status, CCS ran the customers through a script of questions to elicit information from the customers regarding their account history. Based upon the information provided, some customers were automatically disqualified as class members while others were "pre-qualified." The information on the pre-qualified customers was transmitted to NSTAR Electric for investigation. If, after a check of the customer records, a particular customer qualified for standard offer service, that customer was automatically switched to the correct rate and a full credit was issued on the customer's bill. Other than the bill credit and an explanatory note on the bill, qualifying customers received no additional notice from NSTAR Electric. However, if, after investigation, a customer did not qualify, NSTAR Electric sent that customer a letter explaining the requirements for Standard Offer Service, noting that that customer did not meet the

requirements. This letter also included contact information for plaintiffs' counsel in the event the customer wanted to pursue the matter further.

6. As of May 15, 2002, NSTAR Electric had received approximately 11,000 calls regarding the lawsuit. Of these calls, approximately 8,800 did not qualify for Standard Offer Service, approximately 1,250 pre-qualified but were determined after investigation not to qualify, and ultimately 873 were determined to be members of the class.

7. Also, as of May 15, 2002, NSTAR has received eight inquiries from customers questioning the status of their account(s) or challenging the determination that they were ineligible for Standard Offer Service. Each of these letters has been investigated and, where appropriate, credits were issued. Where the customer did not qualify as a member of the class, a customer representative called the customer and informed them of the determination and the reasons behind that decision. As additional inquiries from customers are received, they will be processed in the same manner.

The foregoing statements are signed under the pains and penalties of perjury this
20th day of May, 2002.

A handwritten signature in cursive script, appearing to read "Antonio Simas", written over a horizontal line.

Antonio Simas, Manager of Credit Collections
NSTAR Electric & Gas Corporation

D

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

SHARON DWYER,
JULIE EDWARDS and GEORGE GRAZIANO,
individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,
BOSTON EDISON COMPANY,
COMMONWEALTH ELECTRIC COMPANY, and
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

ORDER AND FINAL JUDGMENT

Plaintiffs, on behalf of themselves and the Settlement Classes, having filed an assented to motion for an order preliminarily approving the Settlement (the "Settlement"), the Court having heard the parties on this matter and reviewed the relevant materials, and having entered its Preliminary Approval order on January 28, 2002 and having held a hearing regarding final approval of the Settlement on June 3, 2002 at 2:00 p.m., at which no objections were filed with or presented to the Court; the Court being fully advised as to the Settlement and good cause appearing therefor, the Court enters its order granting final approval of the Settlement and finds and orders as follows:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action and over all parties to this action, including all members of the Settlement Classes, as defined below pursuant to this Court's preliminary approval order entered on January 28, 2002:

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison Company ("Boston Edison") service territory and receive electric service from Boston Edison:

- a) who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and
- b) who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge Electric Light Company ("Cambridge") or Commonwealth Electric Company ("Commonwealth") service territories and receive electric service from Cambridge/Commonwealth:

- a) who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or
- b) who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

For purposes of this Settlement, the term "Settlement Classes Member" means any person who falls within the definition of either Settlement Class. For the purposes of this Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

- a) the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and
- b) the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

2. The Settlement previously filed in this action and the Settlement set forth therein, are found and determined to be fair, reasonable, and adequate, and are hereby approved and ordered performed by all parties to such Settlement. The Court determines that the notice given to the Settlement Classes constituted the best notice practicable under the circumstances and comported with the requirements of due process; and for purposes of Settlement only, that the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure are satisfied.

3. Immediately upon entry of this Order and Final Judgment, this case shall be dismissed with prejudice, which dismissal shall be without costs to any party. The Settlement approved by this Order and Final Judgment resolves all claims and disputes between the Plaintiffs, Settlement Class Members and the NSTAR Entities (i.e., NSTAR Electric & Gas Corporation, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company) in the Action, as provided in the Settlement. Further, upon entry of this Order and Final Judgment, the NSTAR Entities shall be discharged from any further liability or costs in connection with this matter.

4. This Order and Final Judgment applies to all claims or causes of action settled under the terms of the Settlement, and shall be fully binding with respect to all class members.

5. This Order and Final Judgment is a final judgment and is the Order provided for in paragraph 14 of the Settlement.

6. Without affecting the finality of this Order and Final Judgment in any way, the Court retains jurisdiction over:

- a) implementation and enforcement of the Settlement until each and every act agreed to be performed by the parties to the Settlement shall have been performed;
- b) any other action necessary to conclude the Settlement and implement the Settlement; and
- c) the enforcement, construction and interpretation of the Settlement.

7. This Order and Final Judgment does not constitute an expression by the Court of any opinion, position or determination as to the merit or lack of merit of any of the claims and or defenses of the parties. Neither this Order and Final Judgment, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by defendants or be offered or received into evidence as an admission, concession, presumption, or inference of any wrongdoing by defendants in any proceeding other than such proceedings as are necessary to consummate or enforce the Settlement.

8. No objections to the Settlement have been lodged. The Court finds no just reason to delay entry of this Settlement Order and Judgment. Accordingly, the Clerk is hereby directed forthwith to enter this Order and Final Judgment pursuant to Rule 58, Massachusetts Rules of Civil Procedure.

9. Counsel for the plaintiffs and class are awarded attorneys' fees in the amount of \$217,500, inclusive of costs, to be paid as provided in the Settlement.

10. The named plaintiffs, who were appointed and served as the Class Representatives, shall be paid \$1,000 each for duly performing such representative function, which amount shall be paid by defendants as provided in the Settlement.

_____, 2002

_____, J.

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 01-1817-C

Plaintiffs,

V.

Defendants.

1. As one of the counsel for plaintiffs in the above-captioned proceedings, I have personal knowledge of the matters set forth in this affidavit, which is divided into two parts. The first part details the history of this matter and the efforts of plaintiffs' counsel in litigation, in prolonged settlement negotiations, and in verifying and performing the settlement agreed to by the parties. The second part details the background and experience of the Grant & Roddy attorneys who worked on this matter.

I: Litigation And Settlement

2. This case, which challenged the standard offer and default service billing and classification practices of NSTAR Electric, and sought relief on a classwide basis, was filed with this Court on April 23, 2001.

3. Plaintiffs' counsel began investigating NSTAR Electric's billing practices in the latter part of January, 2001. My firm spent a significant amount of time prior to filing the complaint in identifying patterns in the misclassification of customers; interviewing NSTAR Electric customers, both those who had been properly classified and those who had not; consulting with utility experts on the staff of the National Consumer Law Center; issuing a FOIA request pursuant to M.G.L. c. 66 § 10 and reviewing the results thereof; and researching the substantive and procedural aspects of the law applicable to the practices at issue, including applicable Department of Telecommunications and Energy ("DTE") tariffs and guidelines specific to standard offer and default service classification procedures suggested by DTE.

4. It was only after some three months of investigation into the facts and law that plaintiffs' counsel filed the case against NSTAR Electric. After NSTAR Electric was served, plaintiffs' counsel provided information to NSTAR Electric which synopsized the results of their three month pre-suit investigation. In followup meetings with NSTAR Electric lawyers and personnel, plaintiffs' counsel described the perceived scope and nature of the problem based upon their investigation. NSTAR Electric responded by agreeing to use plaintiffs' investigation as a starting point for its own internal investigation of the allegations plaintiffs were making, and began a dialogue and exchange of information with plaintiffs' counsel to examine the actual nature and extent of the problem. The parties mutually agreed to hold the litigation in abeyance while this evaluative process was ongoing.

5. Plaintiffs' counsel also obtained additional information directly from NSTAR Electric in response to numerous supplementary requests made by counsel in the regular course of the investigation described in this affidavit.

6. This discovery yielded a detailed understanding of NSTAR Electric's standard offer and default service classification and billing practices. Plaintiffs' counsel, through a substantial parallel investigation which supplemented formal discovery, cross-checked this information. This effort included interviews with more than one hundred NSTAR Electric customers, and consultations with plaintiffs' expert, Dr. Steven Kursh.

7. Over the course of the spring and summer of 2001 the parties exchanged information and documents. It was not until the early fall that the parties first broached the outlines of a negotiated settlement of this matter.

8. The detailed knowledge of NSTAR Electric's classification and billing practices, and the understanding of the applicable law and defenses raised by NSTAR Electric, both obtained during the long factual and legal evaluative process described above, proved invaluable in the lengthy negotiations for the settlement of this case. Reaching settlement was difficult; the initial positions of both parties were firm and it took many months of talks, followed by many months more of drafting, revisions and discussion of issues which remained, before settlement was concluded. The issue of counsel fees was not discussed until after all substantive terms of the settlement had been finalized.

9. Plaintiffs' counsel took the depositions of key NSTAR Electric employees involved in the class member identification and reclassification process. Witnesses deposed were: Lauren Foley, the Customer Service Department

employee charged with oversight of the reclassification process, and John Griffin, Corporate Performance Management Consultant.

10. Since settlement was reached, Plaintiffs' counsel have remained vigilant in protecting the interests of class members. The identified class member list provided by NSTAR Electric was reviewed, and a random telephone sampling was made to confirm that class members received notice of this case. The names of potential class members who had not received notice were given to NSTAR Electric, as were the names of persons whose disputes about eligibility, in the opinion of plaintiffs' counsel, warranted a re-review.

11. An important part of settlement implementation was a toll-free telephone helpline, established pursuant to the Settlement by NSTAR Electric, which was made available to NSTAR Electric customers who had questions about the settlement. This helpline has handled more than 11,000 inquiries to date (see Simas Affidavit, Exhibit C to Final Approval Memorandum), including questions from potential class members who needed help with making a claim or assistance in understanding the type of information needed to support claims. Some calls helped identify class members who were not initially identified by NSTAR Electric. The helpline also answered questions from customers, largely relating to eligibility to participate in the settlement. The helpline has thus served as a valuable resource for class members in the settlement process. In addition, Plaintiffs' counsel have taken hundreds of calls from NSTAR Electric customers and have directly assisted class members.

12. Plaintiffs' counsel have worked closely with defendants' counsel to insure that the claims of potential class members were being handled properly and that notices, responses, and other requested information was provided to identified and potential class members in a timely manner. Plaintiffs' counsel's close

coordination with defendants' counsel in the details of the settlement process will continue at least through June, 2002, as all potential claims are fully investigated and resolved. This work will require a significant additional amount of time from Plaintiffs' counsel before the final details of the settlement will be fully resolved.

II: Qualifications And Experience

13. I have been admitted to practice before the Massachusetts Supreme Judicial Court since 1980 and the District Court for the District of Massachusetts and the First Circuit Court of Appeals since 1981.

14. I am a graduate of Boston College Law School (J.D., cum laude, 1980) and the University of Massachusetts at Amherst (B.A., magna cum laude, 1976).

15. I have been in private practice since 1988, and virtually all of my practice has involved litigation on behalf of consumers, representing individuals and classes injured by predatory lending, abusive debt collection and other unfair and deceptive business practices.

16. From 1980-1987 I served as an Assistant Attorney General in the Massachusetts' Attorney General's Office. From 1980-1985, as an attorney in the Consumer Protection Division, I enforced state and federal consumer protection laws on behalf of affected Massachusetts consumers. During my tenure in the Consumer Protection Division I litigated approximately thirty class action type lawsuits to successful conclusion. These lawsuits involved unfair and deceptive business practices which harmed hundreds and sometimes thousands of consumers. From 1986-1987 I was Legislative Counsel to the Attorney General, in the office's Executive Bureau.

17. I have written and spoken extensively on consumer law and specifically on consumer class action litigation:

"Class Actions In Bankruptcy Court: Jurisdiction and Remedial Issues" in *Consumer Financial Services Litigation* (Practising Law Institute, April, 2002).

"The Crossroads of Privacy and Credit: Class Liability Under the Fair Credit Reporting Act" in *Consumer Financial Services Litigation* (Practising Law Institute, April, 2001).

"Unrefunded Credit Insurance Premiums: A MultiMillion Dollar Constructive Trust" in *Consumer Financial Services Litigation* (Practising Law Institute, April, 2000).

"Measuring Liability for the Sale of Ancillary Products: Credit Insurance" in *Banking and Consumer Financial Services Summit* (Fulcrum Information Services, November, 1999);

"Remedies For Systemic Violations Of The Bankruptcy Discharge" in *Consumer Financial Services Litigation* (Practising Law Institute, April, 1999);

"Deconstructing TILA" 14 *Review of Banking and Financial Services* 87 (NSTAR Electric, 1998);

"Reversing Field: Is There A Trend Toward Abrogating Truth in Lending?" in *Consumer Financial Services Litigation* (Practising Law Institute, NSTAR Electric, 1998);

"Reaffirmation Abuses: Class Remedies," in *Consumer Financial Services Litigation* (Practising Law Institute, December, 1997);

"Developments in Residential Mortgage Litigation," 13 *Review of Banking and Financial Services* 83 (April, 1997);

"Yield Spread Premium Upselling and Mortgage Payoff Fees," in *Consumer Financial Services Litigation* (Practising Law Institute, 1997);

Contributor, *Consumer Law Pleadings V* (1999), *III* (1997) and *I* (1995), National Consumer Law Center (annual compendium of pleadings from significant consumer litigation nationwide);

"Residential Mortgage Litigation," in *Financial Services Litigation* (Practising Law Institute, 1996) (with Daniel A. Edelman);

Contributor, *Truth in Lending*, National Consumer Law Center (3d. Ed. 1995);

"Truth in Lending Rescission as Foreclosure Defense" in National Consumer Rights Litigation Conference (published materials, National Consumer Law Center, 1994).

For the past four years I have co-chaired the Practising Law Institute's bicoastal conference on consumer credit class action litigation, *Consumer Financial Services Litigation*, held annually in New York, NY and San Francisco, California. In conjunction with the National Consumer Law Center and the Massachusetts Bar Association I have prepared written materials for and trained legal services and private attorneys in consumer credit law and litigation, focusing on the Truth in Lending Act and Fair Debt Collection Practices Act. I have written and spoken on the substantive and practical applications of the Massachusetts consumer protection act and its conjunction with the federal consumer credit protection act both locally and nationally:

"Class Liability Under The FCRA" prepared for the Florida Bar Association Mid-Year Conference (June 2001);

"Show Me The Money (State Analogs to Federal Consumer Credit Protection Laws)," Mass. Continuing Legal Education, Inc., 2000;

"Emerging Trends in Class Action Litigation," prepared for the Florida Bar Association Mid-Year Conference (January 1999);

"Defending Foreclosures," Mass. Continuing Legal Education, Inc., 1999 (in conjunction with the Volunteer Lawyers Project);

"Fair Debt Collection Practices Act and Consumer Credit Issues," Mass. Continuing Legal Education, Inc., 1999;

"Representing Low Income Clients," Mass. Continuing Legal Education, Inc., 1999 (in conjunction with the Volunteer Lawyers Project);

"Representing Debtors," Mass. Continuing Legal Education, Inc., 1998 (in conjunction with the Volunteer Lawyers Project);

"Consumer Finance Regulation," Mass. Continuing Legal Education, Inc., 1997;

"Sophisticated Collection Issues," Mass. Continuing Legal Education, Inc., 1997;

"Trends in Consumer Credit Class Action Litigation", prepared for the Florida Bar Association Mid-Year Conference (January 1997);

"Chapter 93A Rights and Remedies," Mass. Continuing Legal Education, Inc., 1986, 1987, 1994;

"The Tin Men: Predatory Lending," National Institute of Municipal Law Enforcement Officials, 1991, National Association of Housing and Redevelopment Officials, 1992;

"State Unfair and Deceptive Practices Laws," ABA National Teleconference on Consumer Law, 1986 (co-authored with former Massachusetts Attorney General Francis X. Bellotti).

I have also written the brief of *amicus curiae* submitted by the National Association of Consumer Advocates ("NACA") in Botelho v. Citicorp, CA No. 96-12279-EFH, United States District Court, District of Massachusetts, No. 97-1535, United States Court of Appeals for the First Circuit, involving an appellate challenge by the home mortgage industry to protections from foreclosure contained in the Truth in Lending Act. NACA also commissioned Grant & Roddy to write the *amicus curiae* brief it filed in a similar Truth in Lending appeal before the United States Supreme Court. Beach v. Great Western Bank, United States Supreme Court, No. 97-5310. I am a member of the Editorial Board of Advisors of the "Consumer Financial Services Law Report", a consumer law newsletter distributed by LRP Publications and a member of the Board of Directors of the Massachusetts Appleseed Center, a non-profit public interest law organization which seeks to develop law-related solutions to pressing social problems.

18. In 1991 and 1992, as outside counsel to the Boston Redevelopment Authority and City of Boston, I helped to craft a \$12 million agreement between Fleet Bank and the City of Boston designed to make whole some 550 Boston

residents who were victims of illegal mortgage lending practices. I also helped structure and administer the program by which these settlement funds were distributed to affected individuals.

19. Since entering private practice, my firm has obtained several hundred million dollars in restitution and debt forgiveness for consumers by successfully asserting federal consumer credit law claims on their behalf. A partial listing of litigated cases includes the following:

Brown v. Gibraltar Savings Bank, et al, No. L-710-99, Superior Court of New Jersey, Law Division, Cumberland County and Carrasco v. Parkway Mortgage and Fidelity Security Life Ins. Co., No. L- 00-4815-99, Superior Court of New Jersey, Law Division, Camden County (consolidated class action settlement in favor of statewide class of credit insurance purchasers refunding unearned premiums);

Coley v. Guarantee Trust Life Ins. Co., No. 99-006680, Circuit Court of Cook County Illinois, Chancery Division (class action settlement in favor of statewide class of credit insurance purchasers refunding unearned premiums);

Patton v. JB Robinson Jewelers, Inc., et al, CA No. 97-C-4151, United States District Court for the Northern District of Illinois and York v. Weisfields Jewelers, Inc., et al, CA No. 98-C-5227, United States District Court for the Northern District of Illinois s [MDL No. 1192] (class action settlement in favor of nationwide class of financed jewelry purchasers);

Migut v. Tandy Corporation, No. 97-C-4800, United States District Court for the Northern District of Illinois (class action settlement in favor of nationwide class of bankruptcy debtors);

Mazola, et al v. The NSTAR Electric Department Stores Company, United States District Court, District of Massachusetts, Civil No. 97-10872-NG (class action settlement in favor of nationwide class of bankruptcy debtors);

Fisher, et al. v. General Electric Capital Corporation, et al, No. 97 C 3065, United States District Court for the Northern District of Illinois [MDL No. 1192] (class action settlement in favor of nationwide class of bankruptcy debtors);

Conley, et al v. Sears, Roebuck & Company, CA No. 97-11149-PBS, United States District Court for the District of Massachusetts and Brioso, et al v. Sears, Roebuck & Company, 97-1222-CJK, United States Bankruptcy Court, District of Massachusetts [MDL No. 1185] (class action settlement in favor of nationwide class of bankruptcy debtors);

Donlevy v. First Commercial Mortgage Co., Inc, et al, CA No. No. 96-11401-GAO, United States District Court, District of Massachusetts (class action settlement in favor of nationwide class of consumer mortgage borrowers);

Coppola, et al v. Wendover Funding, Inc, et al, CA No. 96-11458-PBS, United States District Court, District of Massachusetts (class action settlement in favor of nationwide class of consumer mortgage borrowers);

McKay, et al v. ContiMortgage Corporation, et al, CA No. 96-10717-EFH, United States District Court, District of Massachusetts (class action settlement in favor of nationwide class of consumer mortgage borrowers);

Mogavero, et al v. Matrix Financial Services, Corp., CA No. 96-11149-GAO, United States District Court for the District of Massachusetts, and [consolidated] Limper, et al. v. Matrix Financial Services, Corp., 96-CVH-022, Court of Common Pleas, Ottawa County, Ohio (class action settlement in favor of national class of consumer mortgage borrowers);

Davis, et al v. GE Capital Mortgage Services, , Inc., Civil No. 95-2043, United States District Court for the District of New Jersey (class action settlement in favor of national class of consumer mortgage borrowers);

Dunmire, et al v. Domestic Loan and Investment Bank, et al, CA No. 95-12617-JLT, United States District Court for the District of Massachusetts (class action settlement in favor of regional class of consumer mortgage borrowers);

Dwyer, et al v. Barco Auto Leasing Corporation, Barron Chevrolet, Inc., and Bernardi, Inc., CA No. 95 - 10888-WGY, United States District Court, District of Massachusetts (class action settlement as to the defendants Barron and Bernardi in favor of statewide class of consumer lessees of motor vehicles);

Black, et al v. Mitsubishi Motors Credit of America, Inc., Civil Action No. 94C-3055, United States District Court for the Northern District of Illinois, Eastern Division (class action settlement in favor of national class of consumer lessees of Mitsubishi motor vehicles);

Roach, et al, v. Colonial National Bank and Advanta Mortgage Corp.. USA, Suffolk Superior Court Civil Action No. 93-3542 (class action settlement in favor of statewide class of consumer mortgage borrowers);

Hodo, et al v. Financial Enterprises Corporation, Suffolk Superior Court Civil Action No. 93-2861 (multi-plaintiff settlement in favor of elderly eastern Massachusetts consumer mortgage borrowers);

involving consumer protection issues and is a frequent expert witness in litigation across the country. He has also conducted numerous national trainings on consumer bankruptcy, consumer credit and foreclosure prevention. Mr. Klein graduated from Yale University and Rutgers Law School. He is a past director of the National Association of Consumer Bankruptcy Attorneys and is currently a director of the American Bankruptcy Institute. Mr. Klein formerly served as a Senior Attorney at the National Consumer Law Center in Boston.

Elizabeth A. Ryan practices in the areas of class actions and consumer credit litigation. A graduate of Catholic University (J.D., 1985) and the College of the Holy Cross (B.A., 1981), she is admitted to the state and federal district courts of Massachusetts and the First Circuit Court of Appeals. Ms. Ryan is a member of the National Association of Consumer Advocates and the Women's Bar Association and a former Consumer Law Fellow, National Consumer Law Center (1993). She is the co-author of Repossession & Foreclosures (National Consumer Law Center, 1997 Supplement).

Frederic D. Grant, Jr. practices in the areas of bankruptcy, business reorganization, class actions, debtor-creditor relations, and civil litigation. A graduate of Boston College Law School (J.D., cum laude, 1983), and Bates College (B.A. with high honors, 1976), he is admitted to the state and federal district courts of Massachusetts and Connecticut, the federal district court for the Northern District of Texas, and the First and Fifth Circuit Courts of Appeal. Mr. Grant is a member of the American, Massachusetts, and Boston Bar Associations, and the American Bankruptcy Institute. Selected publications include: lead author, Asset Protection

Planning in Massachusetts (Professional Education Seminars, 1991); lead author, Sophisticated Collection Issues (Mass. Continuing Legal Education, Inc., 1997).

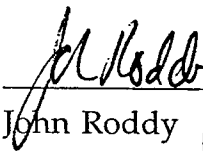
Elizabeth A. Miller practices in the areas of class actions and consumer credit litigation. A graduate of Brown University (B.A., 1982), Columbia University (M.A., 1985) and Yale University (J.D., 1990), she is admitted to the state and federal district courts of Massachusetts, and the state courts of New York. Ms. Miller is a member of the National Association of Consumer Advocates and the Women's Bar Association. Selected publications include: Contributing author, Consumer Finance Regulation (Mass. Continuing Legal Education, Inc. 1997); The Cost of Credit (National Consumer Law Center, 1997); Truth in Lending (National Consumer Law Center, 1995, and supplements).

22. The following summary of the billable hours of the professionals and staff in my firm on this case has been compiled from contemporaneously recorded computerized records:

Timekeeper	Total Hours	Rate	Current Lodestar
<u>Attorneys:</u>			
John Roddy	180.26	\$325	\$58,082.34
Gary Klein	139.20	\$325	\$40,056.25
Elizabeth Ryan	19.20	\$275	\$5,280.00
<u>Paralegals:</u>			
Patricia Courville	16.20	\$75	\$1,215.00
Nicole Looney	38.57	\$75	\$2,892.50
Total, Professional Time	393.43		\$107,526.09
Expenses			\$5,912.18
Total, Time and Expenses			\$113,438.27

Based on my knowledge of the market rates in the community of attorneys of similar skill and experience, the rates charged by the firm are reasonable.

Signed under the penalties of perjury this 20th^h day of May, 2002.



John Roddy